

PLANNING FOR THE UNEXPECTED

CLOSING YOUR LAW PRACTICE IN THE EVENT
OF YOUR ABSENCE, DISABILITY OR DEATH

LAW PRACTICE MANAGEMENT
A MEMBER SERVICE OF THE STATE BAR OF GEORGIA



GETTING STARTED

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Planning for the Unexpected: *Closing Your Law Practice In the Event of Your Absence, Disability or Death*

Preface to the 2020 Edition
As of 2/11/2020

This guide has been developed by the Law Practice Management Program of the State Bar of Georgia as a member service in response to the questions we are asked most frequently by those contemplating closing a law practice. It may answer all of your questions; on the other hand, because every law practice is different, you may have questions remaining regarding issues that are not covered here. Please feel free to call the staff of the LPM Program at any time for additional information on subjects of concern to you.

Again, because each lawyer's situation is unique, regard the information contained in this booklet as you would the suggestions of a colleague: good food for thought, useful background material, but no substitute for your own individual research and planning. There are many different reasons why a law practice closes, some are planned, *e.g.*, retirement, merging firms, or entering public office, and others can be unplanned, *e.g.* disability or death. The ethical duties of the lawyer in each of these situations, however, are similar - to protect the clients' interests. There are no specific rules covering what lawyers must do in winding down a law practice.

This publication focuses on the basic ethical obligations when closing a law practice. The forms and suggested procedures provided here are meant to assist lawyers in accomplishing a smooth and efficient transition that meets a lawyer's ethical obligations. Lawyers with questions are encouraged to call the *State Bar of Georgia's Ethics Hotline* at 404-527-8741 or 800-334-6865.

Any references to companies or products are not intended as product endorsements. Please do not copy or distribute this guide without the consent of the State Bar of Georgia.

Reviewers

We wish to express our appreciation to the State Bar of Georgia's Office of the General Counsel, whose staff reviewed this book. Their suggestions on the material were most helpful.

Special Acknowledgments

This handbook was adapted from the Oregon State Bar Professional Liability Fund handbook *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, Copyright 1999 and New York State Bar Association handbook *NYSBA Planning Ahead Guide: How to Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability*, Copyright 2015-2016. All rights are reserved except that members of The State Bar of Georgia and other lawyers licensed in Georgia may use this material for assistance with their own law practice or to help another lawyer close his/her office. This material may also be reproduced for classroom instruction or for use by a not-for-profit organization, provided that such use is for informational, non-commercial purposes only and any reproduction of the handbook or portion thereof acknowledges original publication of the handbook by the Oregon State Bar Professional Liability Fund and notes if the material was adapted with permission of the Oregon State Bar Professional Liability Fund.

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Special thanks go to Oregon State Bar Professional Liability Fund, New York State Bar Association, and Ed Poll with LawBiz® Management Company for providing model forms within the Guide. The *Guide* and its model forms have been revised and updated by the State Bar of Georgia's Law Practice Management Program and Office of General Counsel.

Planning for the Unexpected:

Closing Your Law Practice In the Event of Your Absence, Disability or Death

It is not easy to think about circumstances that could render you unable to continue practicing law. Unfortunately, accidents, illness, disability, planned or unplanned retirement, and untimely death are events that do occur. Under any of these circumstances, your clients' interests, as well as your own, must be protected.

Although there are no specific requirements in the Georgia Rules of Professional Conduct (GRPC) specifying the steps a lawyer must take to protect his or her clients in the event of a sudden inability to continue in practice, several Rules and Comments, along with general principals of attorney professionalism and fiduciary duty, provide guidance on this issue. It is clear that there is a duty on the part of the attorney to protect his or her clients from the adverse consequences of such an event. For example, a lawyer who "neglects a matter" may violate GRPC 1.3 (Diligence). By arranging in advance for the temporary management or closing of your practice, your ongoing matters will be handled in a timely manner and there will be less likelihood that a court date will be missed or a closing delayed (for example, because of an inability to access your escrow account), or clients' interests otherwise prejudiced. Funds and property belonging to your clients will be returned to them promptly, as required by GRPC 1.5(c) (Fees). You will also be assured that your clients' files will be protected and that your office bookkeeping records will be maintained as required by GRPC 1.15(III) (Record keeping).

Attorney professionalism is often equated with dedication to clients, service, competence and the display of good judgment. Formulating a plan today, you will be fulfilling your ethical responsibilities and your obligations of attorney professionalism. The information in this *Guide* is designed to assist you in protecting your clients and your practice.

Following this introduction and overview are materials and model forms to assist you in this process. The Guide will help you to properly protect your clients and your practice if you are personally unable to act. To assist you in designing your Advance Exit Plan, Chapter 3 refers by name to the forms and documents that are included in this section and in the attached Appendices. You will also find in Chapters 1, 4 and 5 frequently asked questions (FAQs) and checklists which raise issues that should be considered in making plans to protect clients' interests in the case of the sudden unavailability of a sole practitioner. For example, the checklists and documents in each chapter will help a sole practitioner in closing one's own office or that of another attorney, or temporarily assuming responsibility for another attorney's practice.

Note: The *Planning for the Unexpected Guide* refers to three categories of lawyers: (1) the lawyer whose disability, incapacity, retirement or death is the occasion for actions, is referred to as the “Absent Lawyer,” (2) the lawyer called upon to respond to the disability, incapacity, retirement or death of another lawyer, is referred to variously as the “Successor,” and (3) the “Selling attorney” refers to the lawyer who buys a law practice under the circumstances described in this *Guide*.

CHAPTER 1

CLOSING YOUR OWN LAW OFFICE

CLOSING A LAW PRACTICE CHECKLIST

1. Notify all current clients.

Most lawyers who wish to close a practice will find that they have current open matters. You may, of course, simply decline new work and gradually decrease your workload until the affairs of all current clients have been completed. If, however, you need to close a practice abruptly because of health, financial or other considerations, you will need to take steps to ensure that current clients are not harmed. (See *Timeline for Closing Your Law Practice*.)

Indeed, it is possible in certain situations you may find you cannot completely close a practice until you have concluded representing a particular client – for example, you are currently in litigation and cannot gain the court’s or the client’s permission to withdraw.

There are two ethics rules that are relevant to closing your practice, Rule 1.16(d) (Declining or Terminating Representation) and Rule 1.17 (Sale of Law Practice). (See *Appendix A-Ethics Rules Relevant to Closing a Law Practice*.)

2. Finalize as many active files as possible.

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 frames important to their matters. The letter should explain how and where they can pick up copies of their files and should give a deadline for doing so. (See *Appendix B-Letter to Client Attorney Advising That Lawyer Is Closing His/Her Law Office*.)

If possible, provide sufficient advance written notice of the closure for your practice so as to provide clients with reasonable and sufficient time to make other arrangements.

For cases that have pending court dates, depositions or hearings, discuss with affected clients how to proceed. Where appropriate, request extensions, continuances and the rescheduling of hearing dates. Send written confirmations of these extensions, continuances and rescheduled dates to opposing counsel and to your client.

For cases before administrative bodies and courts, obtain clients’ permission to submit motions and orders to withdraw as counsel of record. Review Rule 1.16. (Declining or Terminating Representation) (See *Appendix I-Motion to Withdraw as Counsel*, *Appendix K – Notification Certificate* and *Appendix L – Order Permitting Withdrawal of Attorney*.)

In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed. (See *Appendix J-Notice of Substitution of Counsel*. Select an appropriate date and check to see if all matters have a motion and order allowing your withdrawal as counsel of record or a Substitution of Attorney filed with the court. (See *Appendix I-Motion to Withdraw as Counsel*, *Appendix J-Notice of Substitution of Counsel*, *Appendix K – Notification Certificate* and

Appendix L – Order Permitting Withdrawal of Attorney.)

Make copies of files for clients and yourself. All clients should either pick up their files (and sign a receipt of acknowledging that they received them) or sign an authorization for you to release their files to their new attorneys. (See *Appendix F-Authorization for Transfer of Client File* and *Appendix H-Acknowledgement of Receipt of File* forms.)

If you sold your practice, you will have already advised your clients of your prior intent to do so. You should still advise them also of your having completed the transaction, the location of their files in the event some clients have declined to retain the Purchasing Attorney and have not collected or released their files, and the name, address and phone number of the purchasing attorney. (See *Sale of a Law Practice Guide* for more information on this subject.)

3. Notify all clients for whom you handled matters that are now closed and check for client property in closed files.

Many lawyers who have been in practice for a number of years have accumulated material in their files that belongs to their clients. You may have original documents (wills, contracts, deeds), or material that was once used in evidence (bank statements, letters, insurance papers). Even if you do not hold material that belongs to them, the file belongs to the client and you should notify your former clients that the office is closing and to ask if they would like their files returned to them. (NOTE: If you are not planning to destroy the file, keep a copy of the file to satisfy the run of any applicable statute of limitation. (See *Appendix G - Request for File*.)

Tell all your clients that they can pick up their closed files and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy their files if they not wish to pick up their closed file. If a closed file is to be stored by another attorney, obtain 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. You may also want to check with your professional liability insurance carrier regarding file retention. The carrier may have a specified retention policy and violating it may invalidate your coverage. (See *Appendix D-Authorization to Return or Store Files Letter* or *Appendix E – Notice Regarding File Destruction*.)

If you cannot reach former clients, you may want to consider taking out a classified advertisement, especially if you have been in a small town or an office established for a number of years.

4. Arrange for calls to be forwarded.

If you are a sole practitioner, arrange to have your office calls forwarded to you or another person who can assist your clients. 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.

5. Review procedure for retention and destruction of old files.

Most attorneys who are leaving the practice of law don't want to have to retain responsibility for hundreds or thousands of old files. If, however, you have a file retention policy for your firm or if your professional liability carrier has a retention policy that specifies that the files will be kept for a certain number of years, those files need to be kept in accordance with your policy, even if it means renting storage for them.

Many lawyers have no written policy. What happens to your old files in that case? There is no State Bar rule that specifies that files must be kept for a particular length of time. Generally, there is a four- year statute of limitations for filing a grievance against a lawyer, so many lawyers regard four years as an absolute minimum for preservation of material. The Office of General Counsel, however, recommends that you retain files for at least six years. (See *File Retention: What's the Ethical Thing to Do?* and *Developing a File Retention Policy for Your Firm* articles.) Trust account records should be kept for six years per Rule 1.15(I) (Safekeeping Property: General).

6. Review contents of any safe deposit boxes held by the firm.

Safe deposit boxes may contain property belonging to a client (i.e., wills), to a third party (objects intended to be used as exhibits in litigation), or to the law firm (stock certificates). Any property not belonging to the lawyer or law firm must be immediately returned. See Rule 1.15(I). If the parties who own the property cannot be found, the law firm must hold the property in accordance with the Georgia Unclaimed Property Act.

7. Close out your trust account ledgers.

You should special care if you close your office while still holding client funds. Any monies you have in your trust accounts must be accounted for and either returned to the client, paid out for the purpose intended, or transferred to you as firm income. (Rule 1.16(d) ... lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.) Even if you feel certain you do not owe clients money, you should not leave money in a trust account if your firm has closed its doors. Monies left in a trust account and not returned to the client or through the Georgia Unclaimed Properties Act may be subject to tax implications. Exception: If you hold money in trust for a client or third party who cannot be located, you may be required to continue holding it until it can be disposed of in accordance with the Unclaimed Property Act. Remember that "client property" can also be found in safe deposit boxes and, on rare occasions, in other bank accounts set up for the benefit of the client. (FAO 98-2). It may be help to consult your certified public accountant with regard to questions about tax issues.

8. Close your operating account and any other firm accounts.

Once all outstanding bills are accounted for and paid, all client advances reimbursed and accounts receivable collected, close your business accounts. Transfer excess revenue into your personal accounts, tax-deferred accounts or capital accounts in a new firm. A final audit by a tax professional is always a good idea.

The issue of accounts receivable can be a thorny one. If your law firm consists of more than one person, you may need to leave open accounts until all “firm money” comes in or is written off, in order to properly distribute the earnings. Resist the temptation to have clients pay you directly in your own personal name if you are collecting firm payments. (See *Appendix C – Notice That File Should Not Be Closed.*)

If the firm has investment accounts or holds a financial interest in real property, these matters will need to be dealt with as well (probably by a competent tax advisor).

9. Check your malpractice insurance to see if you need tail coverage.

Depending on whether your insurance is claims-based or incident-based, you may need extra insurance to cover you for claims made after the office is closed and policy cancelled. Make sure you discuss your situation with your insurance carrier and get a recommendation. Also be sure you ask your client about their file retention policy.

10. Find and review other policies, leases or contracts.

Maintain a complete record of all current and past facility and equipment records, including deeds, mortgage, leases, and related materials. The law firm may be closing while a term exists on the office lease, while disability or key man insurance policies are still in effect, or while you are obligated under the terms of a contract for equipment. Locate all important papers of that nature to determine what the firm’s (or estate’s) responsibilities are. (See *Law Firm Master List of Contacts and Important Information.*)

You should maintain a complete and up-to-date employee file, including resumes, employment agreements, payroll and tax records and other significant documents. (See *Law Firm Master List of Contacts and Important Information.*)

Identify all outside service personnel and providers by name, address, phone and fax numbers, and email address. (See *Law Firm Master List of Contacts and Important Information.*)

11. Notify other interested parties of your new address/firm affiliation.

If you are retiring, you may wish to change your State Bar membership from active to inactive if you do not intend to practice law at all. (See Rule 1-201. Membership.) If the lawyer’s survivors must close down the practice themselves, they should immediately notify any courts in which the lawyer has practiced of the situation to determine if the lawyer has any matters pending with the

court. The clerks should be able to advise what proper procedure should be and the judges will probably be quite helpful in approving delays and even suggesting attorneys who may be able to step in. Also, you may wish to contact the State Bar for additional guidance.

TIMELINE FOR CLOSING YOUR LAW PRACTICE

There are two sides to winding down a law practice. The first is the ethics side and your lawyerly responsibilities to your clients. The second is the business side and your responsibilities as the owner of a professional services firm.

The following two-part checklist should be helpful in building a useful timeline for closing your practice and tracking the tasks to be completed in this complex process.

Checklist for the Ethics Side of the Practice

Date to Be Completed	Person Responsible	Date Completed	Description of Action to Be Completed
			Continue obligation to ensure clients' interests and confidences are protected. Fulfill attorney's fiduciary obligations regarding safekeeping client property.
			Review and satisfy attorney's recordkeeping obligations.
			Create an organizational system to keep track of all client notification letters and responses.
			Implement file retention policy.
			Assist clients in obtaining new legal representation. Offer the names of three competent attorneys, as well as the name of local bar association's lawyer referral service.
			Make reasonable efforts to have up-to-date contact information for all current and former clients.
			Notify current clients that the practice will be closing. Send via certified mail (return-receipt requested) to last known address. Send out: (1) Letter of instruction, to be completed and signed by client and returned to attorney, that explains how client wants to dispose of files. (2) Receipt of file(s) to be signed by client. (3) Letter of referral to three attorneys and the local bar association's lawyer referral service.

			Keep records of what was sent to whom.
			Send notice letter to clients who have not yet contacted your office. Letter informs them that you have a file representing work done for them in the past. Request that they pick up the file within 30 days or they can expect the file to be destroyed in accordance with the rules and regulations of your jurisdiction.
			Return all client property or obtain successor escrow holder.
			Complete all your billings, making sure you are current, and determine how to handle unearned fees that remain.
			Close out client trust accounts.
			Review and prioritize all open files with emphasis on time-sensitive issues such as statutes of limitations, trial dates, filing deadlines, etc. Also confirm that open client files can withstand the scrutiny of public or outside review.
			Review closed files and seek to have clients retrieve them.
			File appropriate pleadings, including substitution of attorneys, motion to withdraw, motion for continuance and the like, as may be appropriate for all litigated matters.
			For all files not retrieved by clients or their representatives, retain the files for at least two years—or longer if required by your jurisdiction—and then dispose of them in accordance with your file retention plan. If your engagement letter does not have a provision about file retention, and if your office otherwise lacks such a policy, create the needed policy immediately.
			Talk to insurance carrier about an E&O "tail" policy or discuss continued coverage on an annual basis.
			When leaving law practice entirely, consider filing for "inactive" status with state bar association.

Checklist for the Business Side of the Practice

Date to Be Completed	Person Responsible	Date Completed	Description of Action to Be Completed
			Develop action plan and timetable for how to manage the practice's closing.
			Inventory all assets and liabilities, including work-in-progress and possible contingent liabilities.
			Focus special attention on collecting accounts receivable (A/R) and preparing and sending bills for all work performed to date.
			For outstanding accounts receivable from solvent clients, consider engaging a collection agency and filing a collection lawsuit.
			Take control of all operating and client trust accounts, business assets, equipment, client directories, and premises used in the practice.
			Determine any bank obligations and deal with them by either honoring them or obtaining extensions until a plan for winding down your practice is fully developed.
			Pay or negotiate reduction of outstanding debt with all creditors. Terminate, arrange for reduced payment, or arrange for ongoing payment with creditors as may be appropriate.
			Discuss the expiration of office lease with the landlord. Arrange to have office space and storage space leases terminated on the necessary date.
			Review all insurance policies, including malpractice, general liability, disability, and life policies. Contact the insurance broker if a claim is to be made.
			Determine appropriateness of maintaining business entity for liability or tax filing purposes.
			Determine tax filing requirements for both federal and state tax returns.

			If the practice is a corporation, and if dissolution is selected, complete all state and tax (federal and state) filing requirements.
			Determine where state statutes require public notice of intent to wind down business. Determine state statutory requirements for dissolution of entity, such as specific filings with the secretary of state's office.
			Notify utilities, phone companies, and Internet service providers of the practice's closing, and specify dates services should be disconnected (or transferred).
			Notify vendors and suppliers, such as West, LexisNexis, and others, of intent to terminate ongoing relationship.
			File mail-forwarding instructions with the post office.
			Sell, donate, or plan to move personal property such as furniture, library materials, etc.
			For all property to be moved, solicit bids and negotiate pricing and specifics with moving company.
			Complete move out from the office and clean up the space.
			Inspect old space with the landlord, and obtain formal, written release from the space.

This material comes in part from the book Selling Your Law Practice: The Profitable Exit Strategy written by Ed Poll with LawBiz® Management Company, and is reprinted with the permission of the author.

Law Biz Management Company, Edward Poll & Associates, Inc., www.lawbiz.com, 800-837-5880, edpoll@lawbiz.com.

LAW FIRM MASTER LIST OF CONTACTS AND IMPORTANT INFORMATION

Important note: In order to ensure access to a list in case of an emergency, a current copy of this list should be kept off-site, e.g., in case the copy at the law firm is destroyed, and should probably be provided to the attorney's spouse or other appropriate person(s). It may be preferable to keep all of this information in electronic format.

ATTORNEY NAME:

Social Security #:

FIRM NAME:

OCA Registration #:

Federal Employer ID #:

CAF #:

Date of Birth:

Office Address:

Office Phone:

Office Box:

Home Address:

Home Phone:

Cell Phone:

Password: _____

E-mail Address:

Password: _____

URL:

Internet Service Provider:

SPOUSE:

Name:

Work Phone:

Cell Phone:

Employer:

FORMER EMPLOYER WITHIN PREVIOUS FIVE YEARS:

Name:

Office Address:

Office Phone:

OFFICE MANAGER:

Name:

Home Address:

Home Phone:

Cell Phone:

COMPUTER AND TELEPHONE PASSWORDS:

(Name of person who knows passwords or location where passwords are stored)

Name:

Home Address:

Home Phone:

Work Phone:

Cell Phone:

SECRETARY/ADMINISTRATIVE ASSISTANT:

Name:

Home Address:

Home Phone:

Cell Phone:

BOOKKEEPER:

Name:

Home Address:

Home Phone:

Cell Phone:

LEGAL ASSISTANT:

Name:

Home Address:

Home Phone:

Cell Phone:

LANDLORD:

Name:

Address:

Phone:

LOCATION OF OFFICE LEASE:

DATE LEASE EXPIRES:

NAMED EXECUTOR:

Name:

Address:

Phone:

ATTORNEY FOR SPECIAL MATTERS:

Name:

Office Address:

Office Phone:

ACCOUNTANT:

Name:

Office Address:

Office Phone:

ATTORNEY ENGAGED TO CLOSE PRACTICE:

Name:

Office Address:

Office Phone:

**LOCATION OF AGREEMENT ENGAGING ATTORNEY TO CLOSE PRACTICE:
ATTORNEYS TO ASSIST WITH PRACTICE CLOSURE (if none appointed):**

First Choice:

Office Address:

Office Phone:

Alternate Choice:

Office Address:

Office Phone:

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust by Contacting:

Address:

Phone:

PROCESS SERVICE COMPANY:

Name:

Address:

Phone:

Email/fax:

Contact:

OFFICE-SHARER OR “OF COUNSEL”:

Name:

Address:

Office Phone:

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer:

Address:

Phone:

Email/fax:

Policy No.:

Broker or other contact person:

LEGAL MALPRACTICE COVERAGE:

Insurer:

Address:

Phone:

Email/fax:

Policy No.:

Broker or other contact person:

HEALTH INSURANCE:

Insurer Name:

Address:

Phone:

Email/fax:

Policy No.:

Persons Covered:

Contact Person:

DISABILITY INSURANCE:

Insurer Name:

Address:

Phone:

Email/fax:

Policy No.:

Broker or other contact person:

LIFE INSURANCE:

Insurer Name:

Address:

Phone:

Email/fax:

Policy No.:

Broker or other contact person:

WORKERS' COMPENSATION INSURANCE:

Insurer Name:

Address:

Phone:

Email/fax:

Policy No.:

Contact Person:

PENSION:

Administrator:

Address:

Phone:

Institution:

Address:

Phone:

Account #:

STORAGE LOCATION:

Storage Company for Location:

Locker or Room #:

Address:

Phone:

Obtain Key From:

Address:

Phone:

Items Stored:

SAFE DEPOSIT BOXES (BUSINESS):

Institution:

Address:

Phone:

Obtain Key From:

Address:

Contact Person:

SAFE DEPOSIT BOXES (PERSONAL):

Institution:

Box No.:

Address:

Phone:

Obtain Key From:

Address:

Contact Person:

LEASES:

Item Leased:

Lessor:

Address:

Phone:

Expiration Date:

Item Leased:

Lessor:

Address:

Phone:

Expiration Date:

Item Leased:

LAWYER TRUST ACCOUNT:

IOLA:

Institution:

Address:

Phone:

Account Number:

Other Signatory:

Address:

Phone:

Password:

OTHER CLIENT ACCOUNTS:

Name of Client:

Institution:

Address:

Phone:

Account Number:

Other Signatory:

Address:

Phone:
Password:

GENERAL OPERATING ACCOUNT:

Institution:
Address:
Phone:
Account Number:
Password:

OTHER ATTORNEY ACCOUNTS:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:
Password:

BUSINESS CREDIT CARDS:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:
Password:

Institution:
Address:
Phone:
Account Number:
Other Signatory:
Address:
Phone:
Password:

MAINTENANCE CONTRACTS:

Item Covered:
Vendor Name:
Address:
Phone:
Expiration:

Item Covered:
Vendor Name:

Address:
Phone:
Expiration:

Item Covered:
Vendor Name:
Address:
Phone:
Expiration:

OTHER IMPORTANT CONTACTS:

Name:
Address:
Phone:
Reason for Contact:

Name:
Address:
Phone:
Reason for Contact:

Name:
Address:
Phone:
Reason for Contact:

PROFESSIONAL MEMBERSHIP ORGANIZATIONS:

Name:
Address:
ID #:

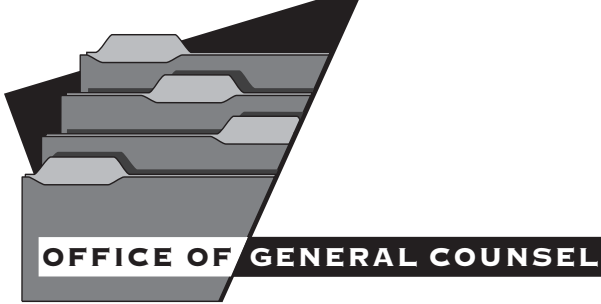
**ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES, JURISDICTIONS, AND
BEFORE THE FOLLOWING COURTS:**

State of:
Bar Address:
Phone:
Bar ID #:

State of:
Bar Address:
Phone:
Bar ID #:

CHAPTER 2

FILE RETENTION



File Retention: What's the Ethical Thing to Do?

YOU'VE GOT BANKERS BOXES with closed files stacked everywhere — in the closets, the basement storage area and even in your attic at home. Wills from estates probated in the last century vie for space with divorce decrees from clients who have long since remarried. It sure would be great to get rid of some of that stuff.

What do the ethics rules say about file retention? Is it ever acceptable to throw away the file from a closed case? Do you have to track down the former client to attempt to return original documents? When you are disposing of a file, can you simply put it in your office trash can and count on the cleaning service to respect its confidentiality?

The Georgia Rules of Professional Conduct are surprisingly silent on the issue of file retention. Aside from Rule 1.15(I), which requires a lawyer to keep trust account records for a minimum of six years,¹ the ethics rules don't require lawyers to keep closed case files for any particular length of time.

The statute of limitations for a typical disciplinary grievance is four years. Since the rules also provide for a two-year tolling of the statute if the offense or offender is unknown or if the offender cannot be found, the Office of General Counsel (OGC) advises callers to the Ethics Hotline to keep closed files for a minimum of six years.²

OGC also suggests that you check with your malpractice insurer before destroying closed files, since

the concerns regarding malpractice may differ from the ethics issues. In fact, the folks at ANLIR, the Bar-endorsed insurance carrier, recommend that a lawyer keep closed files for 10 years. Barbara Evans, director of marketing at ANLIR, believes that the longer you keep a closed file the safer you are. She suggests that certain types of cases, such as real estate, wills/trusts and matters related to juveniles, tend to have a longer life and merit storing the file even more than 10 years.

So you've decided to toss those files. How do you go about it?

First, if you did not return original financial records, photographs or other items with sentimental value to the client at the time that you closed the case, you certainly should attempt to return them before you destroy the file. If you can't find the client, use your best business judgment to decide whether to keep the documents indefinitely. Either way, you won't be committing an ethics infraction if you make the decision in good faith.

Second, how do you dispose of a large volume of files in a way that ensures confidentiality? Any method of destruction which includes reasonable precautions to protect confidential and secret information is fine with the OGC. It may not be reasonable to expect a lawyer to personally feed each page of a client's file to the shredder. On the other hand, if you practice on Main Street where there is heavy pedestrian traffic, it might

not be reasonable to put a bankers box of closed files out on the sidewalk Friday for garbage pickup the following week. A lawyer may reasonably use the services of a paper management or recycling company that disposes of documents in a confidential manner.

Don't forget that the Bar's Law Practice Management Program can assist your staff in establishing file retention and destruction policies. If you have specific questions about this or other ethics topics, please call the OGC Ethics Helpline at (404) 527-8720 or (800) 334-6865. ☒

Endnotes

1. Rule 1.15(I)(a) of the Georgia Rules of Professional Conduct states in part: "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation."
2. Bar Rule 4-222(a) states: "No [disciplinary] proceeding shall be brought unless a Memorandum of Grievance has been received at State Bar of Georgia headquarters... within four years after the commission of the act. ... [T]his limitation shall be tolled during any period of time, not to exceed two years, that the offender or the offense is unknown, the offender's whereabouts are unknown, or the offender's name is removed from the roll of those authorized to practice law in this State."

DEVELOPING A FILE RETENTION POLICY FOR YOUR FIRM

By Terri Olson

What does a good file retention policy contain? Although it is not possible to design a policy that will serve the needs of all firms everywhere, a few generalities can be made. First, the client should be made aware in the initial agreement what will happen to client documents and client files, and under what circumstances. Second, the policy should provide the person responsible for closing out a file clear guidance on what information should be kept and what information may be discarded. Finally, the policy should specify the length of time the remaining material will be kept, as well as where materials will be stored.

The first step in any file retention policy occurs, oddly enough, before the file is created. The attorney should set out, in writing, a detailed explanation for the client of the disposition of any documents in the case before those documents are created. This explanation may be in a general representation agreement or in a specific fee agreement; the important thing is that the client must see (and agree to through signing) the firm's plans for the file. In addition, in order to better protect itself, the firm may wish to make a policy of not retaining original client documents unless those documents must be presented later as exhibits. If the documents are needed only as reference material, the firm should photocopy them, place the copies in the file, and return the originals to the client.

Before any decision can be made concerning how or whether to dispose of the file, the file must actually be closed. What determines when to close the file? Many matters are, as they say, open and shut. For others, however, considerable judgment must be exercised in determining whether the file can properly be called closed.

The first consideration is generally a practical one -- no matter is closed until full payment has been received for it! Therefore, the file must pass in some way through the firm's bookkeeping or accounting department for a status report. Other factors are tied to the nature of the case. The accompanying sample model policy includes a description of common types of actions and suggested closing definitions for each.

Once the file is closed, it should be "stripped" or "culled." In other words, the attorney on the case should review the file and approve the removal and destruction of unnecessary material. Some candidates for "unnecessary material" are duplicate copies (only one need be retained); copies of published material that could be located again (e.g., court opinions); draft versions of memoranda, briefs, pleadings, etc., except when highly significant or contested changes were made between the original and final versions; informal notes; depositions; and purely extraneous material.

After the culling has taken place, the stripped-down version of the file should then be analyzed document-by-document. Documents will either belong to the attorney or to the

firm, or to the client. Any documents in the file that belong to the client (such as client-provided tax records, expense statements, bank records, trust documents, etc.) should be returned. When a document has been returned to the client, the firm should get a receipt, so that there can be no dispute later about whether it was retained or returned. Ideally, however, the firm will have photocopied material whenever possible at the outset of the case, so there should be few originals to return.

Unfortunately, there are occasions when, try as the firm might, it cannot locate the client in order to return documents. What is proper for the firm to do in this case? Most authorities agree that the attorney has an ethical duty to retain important documents permanently if, for some reason, they cannot be returned to the client. Such documents include recorded deeds; accountants' audit reports; tax returns (including all related documents and worksheets); year-end financial statements and depreciation schedules; accounting journals; bills of sale (for important purchases); certificates of incorporation, along with bylaws and minute books; capital stock and bond records; insurance policies and records; property records and property appraisals; copyright, trademark, and patent applications and registrations; major contracts and leases; and actuarial reports.

A final and useful step is for the attorney to distinguish opinions and research items that might be re-used for similar cases in the future, and for those items to be copied and stored in a centralized "reference files" available to all attorneys. Some may object that this results in the creation of more paper, instead of the laudable goal of trimming the office files. While this is superficially true, it is nonetheless preferable in terms of office efficiency that this genuinely useful material be available when needed. If it is not, attorneys will demand that all closed files be stored on the premises or even interfiled with active ones for easy access.

The file should now be in proper form to be removed to a centralized "closed file" location. Inactive or closed files should never be interfiled with active ones, because this will result in a system clogged with files that typically will be examined, if at all, only once every few years.

Given the above complexities, many firms are turning to microfilming files, or other electronic media storage, as a means of avoiding the question of what to retain and for how long. Permanent storage of microfilmed files, they reason, is space-efficient and prevents any future disputes over file contents. While microfilming files may have a place in law firm file retention policies, it should not be regarded as a panacea. It is still necessary, for example, to examine the file to see what must be returned to the client, and it is not legal to microfilm certain documents, such as drivers' licenses or evidences of citizenship. In addition, it is not physically possible to microfilm or scan some client property in one's files. So, while it is tempting to construct a policy that consists mainly of "microfilm everything and keep it forever," this is generally not practical or wise.

We must return, then, to the central question in any law firm file retention policy: how long must the closed files be kept before they are destroyed? While there is no one safe

answer for all types of cases, firms can use the following to establish their own timelines for destruction.

In no circumstances should a closed file be destroyed before the statute of limitations has run on the action. This is an obvious necessity for the attorney to protect himself or herself in case of charges of malpractice. It is important to remember that this protection element should be the prime consideration in file retention, since, if a reference file as discussed above has been established, there will no longer be a need to retain files for research purposes. This minimum time will, of course, vary by case type, so it is entirely possible that a firm may have different destruction schedules for different categories of files.

The prudent firm will then add in a cushion of a few extra years, just in case. The grand total for file retention has been put by experts at anywhere from seven to 15 years; clearly, there is much room for subjective judgment on the part of the firm, although a conservative interpretation is probably called for. In addition, files for some type cases are generally retained permanently. These include bank reorganizations, Chapter 11 bankruptcies, and estate planning files.

A destruction policy is not simply a statement of how long files are kept; other things must be taken into consideration to make file disposal work smoothly. For one thing, will the files be reviewed before they are disposed of, or will the destruction policy automatically go into force on the retention period has expired? If the files are reviewed, then by whom? Unfortunately, although on one level it makes sense to have files reviewed by an attorney before they are destroyed, in practice this is often unworkable; attorneys have many other demands on their time and will likely rank this as an extremely low priority. In addition, the natural conservatism of lawyers and law firms may make the reviewing attorney acknowledge that the time for retention has expired, but suggest that the file be kept anyway, because “you never know.”

The firm must realize that the review step, if it takes place, is merely a final check that no mistakes were made when the file was closed, and not an opportunity to re-analyze the firm’s existing policy and suggest ad hoc improvements. The job must also be seen as a priority item, one which must be done quickly so the file can move on.

How the actual destruction takes place must also be determined. Will files be shredded, pulped, burned? By employees of the firm or by an outside agency? However the files are disposed of, the confidentiality of any sensitive material remaining in the files must be preserved, and the means of destruction should be consistent. In other words, it is not good practice to turn over half the 1981 files to ACME Shredders, Inc., and then dispose of the remaining ones personally in the partner’s fireplace. Again, since one of the primary reasons for having a policy is to prevent even the appearance of wrongdoing in case of a malpractice action, destruction should always be carried out in accordance with written firm policy.

A review of the relevant ethical considerations regarding records retention amply demonstrates a reluctance to designate a number of years as an indicator that a closed file may be discarded. A well-designed and implemented records retention policy will address the issue in a prospective manner, detailing up front in a representation agreement the intent of the firm not to hold original documents and the offer to return them to the client. The policy must address the overriding concern that in all instances the firm follows the expressed instruction of the client. Whatever policy a firm finally develops must also be internally consistent and adhered to by all firm staff in order for the firm to gain any protection from having such a policy in place.

MODEL LAW OFFICE FILE RETENTION GUIDELINES

In General

A lawyer shall establish a written policy governing the disposition of all correspondence and documents, of whatever nature, that are maintained as part of the client file during the course of the representation. It is incumbent upon the lawyer to advise the client of the provisions of the file retention policy at the time of engagement. Providing a copy of the written policy suffices to satisfy this requirement. If the policy requires specific action by the client at the conclusion of the matter, then the client should be advised again at the time of final billing.

The file retention guidelines provided herein represent minimum standards and are not intended to usurp the lawyer's responsibility for maintaining a complete and thorough record of the representation. Nor are these guidelines intended to be a substitute for the judgment of the lawyer. However, retention policies less stringent than these guidelines are generally considered unacceptable and should be pursued with caution.

Definitions

Retention -- That designated period of time following the closing of the matter (active to inactive status) but before final disposition.

Disposition -- The final action taken during the life cycle of the record; one of the following actions:

1. destruction;
2. transfer to vital record;
3. release to the client;
4. release to other agency (such as another lawyer or law firm)
5. permanent retention.

Vital record -- Any record that, in the event of a disaster, would be necessary to protect the interests of the lawyer or the firm and essential to the resumption of business. These records must be secured in a destruction proof environment such as a fire proof safe or vault.

Retention Guidelines

1. A client file should always be reviewed by the lawyer before being closed and prepared for storage. Closing of a file should be in accordance with a prescribed written policy which should consider the following factors:

a. no file should be closed and scheduled for destruction under a retention schedule until “completion of the case or matter” which depends upon the type of matter and shall be defined as follows:

(1) Contract action. Satisfaction of judgment or dismissal of action.

(2) Bankruptcy claims and filings. Discharge or debtor payment of claim or discharge of trustee or receiver.

(3) Dissolution of marriage. Final judgment or dismissal of action, or date upon which marital settlement agreement is no longer effective, except when minor child custody is involved in which event the date of the last minor child’s reaching majority.

(4) Probate claims and estate administration. Acceptance of final account.

(5) Tort claims. Final judgment or dismissal of action except when minor involved, in which event the date of such minor reaching majority.

(6) Real estate transactions. Settlement date, judgment or foreclosure, or other completion of matter.

(7) Leases. Termination of lease.

b. a file should not be closed while outstanding fees are due, or trust account balances exist. The file should remain active until resolution of all billing issues and appropriate disposition of trust monies is completed.

c. all client provided documents should be returned to the client unless the client instructs otherwise. Included in this category are such personal documents as tax records, expense records, bank records, deeds, etc.

d. at the discretion of the lawyer, the file can be culled of unnecessary material:

(1) Legal memoranda, briefs, pleadings, agreements, corporate documents and other original or signed documents need be kept only in final (not draft) form.

(2) notes and memoranda recording nonpublic information regarding a client or its adversary can be destroyed.

(3) copies of published opinions and other available published material can be destroyed.

(4) duplicates can be destroyed.

(5) consider retaining only the first draft and final copy of other documents. However, marked-up copies are often useful in the event questions later arise.

(6) consider removing depositions.

(7) remove extraneous material such as scratch pads, legal pads, and paper clips.

2. As a general rule, no file need be retained in an inactive status for more than ten years beyond the date of closing, except in cases where the law imposes on the lawyer a duty to preserve records for a longer period of time. Notwithstanding the general rule, there are a number of considerations the lawyer must take into account when establishing a retention schedule:

a. Divorce files should be permanently retained when alimony is involved or at least until the youngest minor child involved becomes of age, allowing additional time for the statute of limitations to run.

b. Where there are structured settlements which stretch over a number of years, the file should be retained until that settlement is final.

c. Collection files should be retained until paid or a minimum of 20 years with a judgment. Earlier destruction is appropriate in the absence of a judgment.

d. Generally, Chapter 11 bankruptcy files should be retained permanently.

e. Files in criminal cases involving incarceration should be retained for the length of the incarceration.

f. Labor negotiation files should be retained for a minimum of twenty years.

g. Estate planning files should be retained permanently, including: wills and trusts; pension and profit sharing plans; and tax files; all of which should be treated as vital documents.

h. Files relating to bank reorganizations should be retained permanently.

I. Insurance files involving minor children should be retained until the youngest child involved becomes of age plus additional time for the statute of limitations to run.

j. Certain documents need to be retained permanently if not returned to the client:

- (1) recorded deeds;
- (2) accountants' audit reports;
- (3) tax returns (including all related documents and worksheets);
- (4) year end financial statements and depreciation schedules;
- (5) accounting journals;
- (6) bills of sale (for important purchases)
- (7) minute books, bylaws, and certificates of incorporation;
- (8) capital stock and bond records dealing with capital structure;
- (9) insurance policies and records;
- (10) property records and property appraisals;
- (11) copyright and trademark registrations;
- (12) patents and all related documents and correspondence;
- (13) major contracts and leases;
- (14) actuarial reports.

Destruction of Files

1. Except where required by law, no lawyer is obligated to retain any document or file relating to any client's matter beyond the retention period, provided the retention period is in accordance with a written policy which meets the minimum standards prescribed by these guidelines.

2. Final approval for destruction of a client file or related documents must be affirmatively given by the lawyer following the retention period. The lawyer should sign an appropriate destruction authorization form which should be retained as a permanent record.

3. Several methods are acceptable for destruction of client files. Destruction should be accomplished by shredding, pulping, or any other method that destroys media beyond reconstruction in an environmentally sound manner. The person or service performing the destruction should certify, on the authorization form, the date, location, and method used.

(This material comes in part from an article by J.R. Phelps and Terri Olson entitled "When May I Destroy My Old Files?", originally appearing in the January 1994 issue of the Florida Bar Journal, and is reprinted with the permission of the authors.)

CHAPTER 3

DESIGNATING A SUCCESSOR

ESTABLISHING AN ADVANCE EXIT PLAN: STEPS TO TAKE WHEN LEAVING DUE TO PERSONAL REASONS, DISABILITY OR DEATH

STEP 1: Designate a Successor Attorney to manage or close your practice in the event of your disability, incapacity, retirement or death. This may be accomplished by a limited power of attorney, a comprehensive agreement with detailed powers, or a short form authorization and consent form to close or manage a law practice. Samples of such forms are set forth in “Agreement to Close a Law Practice in the Future,” “Authorization and Consent to Close Law Office in the Future,” and “Limited Power of Attorney to Manage Law Practice at a Future Date.”

STEP 2: Prepare written instructions to your family, your designated Successor Attorney, your nominated executor, and your key office staff containing:

- General information and guidance to minimize uncertainty, confusion and possible oversights;
- Authorizations to release medical information (required by the Health Insurance Portability and Accountability Act) that may be needed to determine your incapacity (See HIPAA release form);
- Specific and detailed information and authorizations needed to close your law practice;
- Steps to be taken to assure that your written instructions are updated and reviewed periodically for completeness and accuracy.

See “Checklist for Lawyers Planning to Protect Clients’ Interests in the Event of the Lawyer’s Death, Disability, Impairment or Incapacity” and “Checklist for Closing Your Own Office.” See in Chapter 1, a form that lists your Law Office contacts, which should be kept up to date and given to your family, staff, and/or Successor Attorney.

STEP 3: Discuss your Advance Exit Plan with the appropriate persons (e.g., your family, designated Successor Attorney, nominated executor, and key office staff) to avoid confusion or delay in the event of your disability, incapacity, retirement or death. For example, your executor should be aware of your wishes with respect to your practice in the event of death, including any instructions you may have given to a Successor Attorney. Not only will this protect your practice, it will also save considerable time and expense that may be incurred in the administration of your estate. The “Law Firm Master List of Contacts and Important Information” and “Special Provisions for Attorney’s Will: Instructions Regarding My Law Practice” provide you with a checklist for your executor, and a sample provision that can be used in your will giving instructions to your executor regarding your law practice.

STEP 4: Your Advance Exit Plan should describe arrangements you enter into with your designated Successor Attorney. (See “Agreement to Close Law Practice in the Future,” “Authorization and Consent to Close Law Office,” and “Limited Power of Attorney to Manage Law Practice at a Future Date.”, which are sample forms that could be used to accomplish this objective.) They should cover the following:

- Authorization to obtain medical information to assist the Successor Attorney (or other designated person, e.g., family member) in determining your incapacity to continue in practice (See HIPAA release form.)
- Authorization to provide all relevant people with notice of closure of your law practice;
- Authorization to your Successor Attorney to contact your clients for instructions on transferring their files;
- Authorization to obtain extensions of time in litigation matters, where needed.

Your Advance Exit Plan might also include sample letters notifying clients of your inability to continue in practice and arranging for transfer or return of files. (See “Letter Advising That Lawyer Is Unable to Continue in Practice” and “Authorization for Transfer of Client File,” “Request for File,” and “Acknowledgment of Receipt of File” - (Appendices E, F, and G.)

In Chapter 3, File Retention, you will find information on the subject of file retention and preservation, providing you with guidance on file disposition. If you are retiring, you should prepare a letter to your clients advising them of your retirement, the need to obtain new counsel, and a procedure for transfer of their files. See “Letter from Absent Attorney Advising that Lawyer is Closing Office.” If there are other attorneys in your firm who would be available to represent the clients in the event of your own inability to practice, your Advance Exit Plan should include a letter from your colleague(s) to your clients advising them of your disability and their availability to continue handling their matter (See “Letter from Closing or Successor Attorney Advising That Lawyer is Unable to Continue Law Practice.”)

Your Advance Exit Plan also should include instructions as to:

- Disposition of closed files;
- Disposition of your office furnishings and equipment;
- Authorization to draw checks on your office and trust accounts;
- Payment of current liabilities of the office;
- Billing fees on open files;

- Collecting accounts receivable;
- Access to important information (e.g., passwords to your computer); and
- Insurance matters.

Your Advance Exit Plan also might include provisions that give your Successor Attorney or executor, as the case may be, authority to:

- Wind down your business financial affairs;
- Provide your clients with a final accounting and statement of work done by you/your office;
- Collect fees on your behalf; or
- Liquidate or sell your practice. (See *Sale of a Law Practice Guide*.)

We encourage you to develop and implement an Advance Exit Plan utilizing the basic guidelines discussed above. You can accomplish this now, at little or no expense, to protect your clients' and your own interests. Don't put it off – start the process today and keep it current and complete.

Compensation to Your Assisting Attorney and Staff

Your Advance Exit Plan should include an arrangement for payment by you or your estate to your Successor Attorney and staff for services rendered on your behalf in closing, temporarily managing until your return, or managing your practice pending its sale. For example, the agreement with your Successor Attorney may provide for compensation based on an hourly rate, for reimbursement of reasonably necessary expenses, and for billing on a monthly basis.

You also should address the issue of how to fund this compensation to your Successor Attorney and support staff. You can direct that payment be made from your office receipts. If you are concerned that your law practice income will be insufficient to defray this expense, you may want to consider disability insurance in an amount sufficient to cover this potential liability. Business Overhead Expense Insurance is a variation on Disability Income Insurance that specifically covers the ongoing expenses of running your office (including nonlawyer staff salaries, rent, equipment leasing, etc.) in the event of your disability.

In the case of death, since your estate will be responsible for payment to the Successor Attorney, your executor or other personal representative should be notified in advance of any arrangements you may have made with regard to this issue. You may want to consider including those instructions in your will, especially if you have not made such arrangements in a separate written agreement. As in the case of disability or incapacity, since your practice may be your only probate asset and insufficient to cover the cost of compensation to the Successor Attorney and disbursements incurred in closing your practice, you may want to consider purchasing an insurance policy naming the estate as beneficiary and specify in your will that the proceeds from the policy be used for this purpose.

Conflicts of Interest and Confidentiality

Although the designation of a Successor Attorney to assume responsibility for client files raises issues of client confidentiality, it is reasonable to read the Georgia Rules of Professional Conduct as authorizing such access and disclosure under these circumstances (GRPC 1.6 (Confidentiality of Information), GRPC 1.9 (Conflict of Interest: Former Client) and GRPC 1.17) (Sale of Law Practice). Remember that if a Successor Attorney discovers evidence of legal malpractice or ethical violations, he or she may have an ethical obligation to take appropriate action. (See “What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.”)

Your Successor Attorney also must be aware of conflict of interest issues and do a conflicts check if he or she is either providing legal services to your clients or reviewing confidential file information to assist with referral of your clients’ files. Your Successor Attorney should be prepared to delegate to another attorney those files with which he or she has a conflict of interest, while being careful to protect materials and information that may be subject to attorney-client privilege or duty of confidentiality. (See “What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.”)

Trust Accounts

If you do not make arrangements to allow another attorney access to your attorney trust account, your clients' money must remain in trust until a court authorizes access. This is likely to cause delay and put your clients and you in a difficult position if you are unable to conduct your practice. On the other hand, allowing access to your trust account is a serious matter. If you give access to your trust account to another attorney and that lawyer misappropriates money, then your clients will suffer, and you may be held responsible. There is no simple answer to this dilemma and other important decisions which you must make regarding your trust account. (See "What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.")

First, you must decide whether to appoint a co-signatory prior to your disability, or to grant access to the account at a specified future time or event. If you decide to allow access to your trust account by your Successor Attorney all of the time, then you can authorize the attorney as a signer on your accounts and contact the bank to sign all appropriate cards and paperwork. This allows easy access on the part of your Successor Attorney if, for example, you are unexpectedly delayed on a trip. However, it opens the door to a host of other risks, as you are unable to control the signer's access. If you prefer not to have a co-signatory on your trust account while you are able to conduct your practice, you may nevertheless plan in advance and give such authority in the future. One option is to give your Successor Attorney a power of attorney that takes effect upon your disability and includes as a power the authority to withdraw funds from your trust account. You may want to leave the executed power of attorney with a third party whom you trust to ensure that it will not be released until the specified event, e.g., disability, occurs.

Another option is to give your Successor Attorney access to your trust account in an agreement or consent and authorization form. (See "Agreement to Close Law Practice in the Future Authorization," "Consent to Close Law Office, and "Limited Power of Attorney to Manage Law Practice at a Future Date.") Again, the power may be conditioned upon the occurrence of a specified event. However, unlike a power of attorney, which ceases upon death, the agreement can authorize your Successor Attorney to operate your trust account upon and after your death. In such case, this power may be used by your Successor Attorney in winding up your practice.

Whichever method you choose, remember to check with the bank that holds your trust account to ensure that your power of attorney or agreement is acceptable to it and to sign additional documents that may be required. The Georgia Rules of Professional Conduct have detailed procedures which should be reviewed carefully by you and your Successor Attorney to ensure that the appropriate steps are taken to safeguard all trust funds and to have the funds delivered to the appropriate parties on a timely basis. (See GRPC 1.16 (Declining or Terminating Representation), GRPC 1.15(I) (Safekeeping Property: General) and the State Bar of Georgia, Law Practice Management Program handbook *Trust Accounting for Attorneys in Georgia*.)

Include Family and Staff

Your Advance Exit Plan also should include written letters of instruction to your family and office staff. In the event of death, these letters should ease the administration of your estate by describing what you have, where it is located, how to access it, and what to do with it. Your family, your executor (in the event of death), your designated Successor Attorney and your office staff need to share information and coordinate their activities in the event of your disability, incapacity or death. Care should be taken to safeguard against improper access to client files and information by unauthorized persons, e.g., non-attorney family members. Generally, these instructions should cover the following:

- All pertinent personal and family information and financial information;
- Identification and location of all estate planning documents, including original wills/trusts;
- Location of personal and business insurance records, among other things.

Guidance to your staff should include directions as to:

- Notifying your professional liability carrier;
- Notifying all courts, tribunals, boards and administrative agencies where your matters are pending;
- Closing your office;
- Reviewing all depositories, including trust accounts and safe contents;
- Coordinating with your accountant.

In effect, you must create a system for the orderly winding up of your law practice and the settlement of your own estate. See “Checklist for the Fiduciary of a Solo Practitioner;” “Law Firm Master List of Contacts and Important Information” and “Special Provisions for Attorney’s Will Regarding My Law Practice.”

Other Steps

There are other steps that you can take while you are in practice to make the closing of your office relatively smooth, timely and cost efficient in the event of disability, incapacity, retirement or death. These steps include:

- Making sure that your office procedures manual explains how to produce a list of client names and addresses for open files;

- Keeping a calendaring system with all deadlines and follow-up dates;
- Thoroughly documenting client files;
- Keeping your time and billing records up to date;
- Familiarizing your Successor Attorney with your office systems;
- Reviewing and updating on a regular basis your written agreement with your Successor Attorney;
- Periodically purging old and closed files (see chapter on File Retention);
- Periodically communicating with clients for whom wills or other original documents are held by your firm to confirm that addresses are up to date and what documents are still relevant.

If your office is organized and in good order, your designated Successor Attorney will be able to manage, close or wind down your law practice in a timely and cost efficient manner. It also will make your law office a more valuable asset that may be sold and the proceeds remitted to you or your estate.

Special Considerations in the Event of Death

In the event of your death, your practice will be an asset of your estate. Your personal representative, be it executor or administrator, is the person ultimately responsible for the administration of this asset, including ensuring that all obligations to clients are met.

If you have designated a Successor Attorney prior to your death, you should notify your personal representative of the appointment and review your Advance Exit Plan with him or her. This will avoid confusion and enable your personal representative to promptly, upon the award of letters testamentary or administration, authorize your Successor Attorney to embark upon his or her duties. You may wish to include in your will a direction to your executor that authorizes and requests delegation of responsibilities relating to the administration and closing of your practice to your Successor Attorney and refers, specifically, to the Advance Exit Plan, if appropriate.

Whether or not you have an Advance Exit Plan, it is critical that you have a current will so that management and closing or transfer of your law practice can be addressed without delay and attendant harm to clients.

You also should consider a source of funding to compensate your designated Successor Attorney, office staff, or attorney and staff retained by your executor who will be working during this transition period. Since your practice may be your principal probate asset and your operating

account may not have sufficient funds for this purpose, you may want to consider an insurance policy as a source of funding to defray this expense. The beneficiary of the policy could be the estate, with specific instructions in your will that proceeds be used for this purpose.

CHECKLIST FOR LAWYERS PLANNING TO PROTECT CLIENTS' INTERESTS IN THE EVENT OF THE LAWYER'S DISABILITY, IMPAIRMENT, INCAPACITY OR DEATH

1. Consider using retainer agreements with your clients that state that you have arranged for a Successor Attorney to manage or close your practice in the event of your death, your temporary or permanent disability, impairment or incapacity, and identifying such attorney. Be sure to keep his/her identity current with your clients.
2. Have a thorough and up-to-date office procedure manual that includes information on:
 - a. How to check for conflicts of interest;
 - b. How to use the calendaring system;
 - c. How to generate and maintain a current list of active client files, including client names, addresses, and phone numbers and email addresses;
 - d. Where client ledgers are kept and if locked how to obtain access to them;
 - e. How the open/active files are organized;
 - f. How the closed files are organized and their assigned numbers;
 - g. Where the closed files are kept and how to access them;
 - h. The office policy on keeping original documents of clients and how to access them;
 - i. Where original client documents are kept and how to access them;
 - j. Where the safe deposit box is located, its number, 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;
 - o. Business and personal insurance policies with contact information for brokers and insurance companies;

- p. How to access all current and past employee service personnel, provider and facility and equipment records.
- 3. Make sure all your file deadlines (including follow-up deadlines) are on your calendaring system.
- 4. Document your files. (Keep a master list of files, past and present. File documents in appropriate files.)
- 5. Keep your time and billing records up to date.
- 6. Have a written agreement and/or power of attorney with an attorney who will manage or close your practice (the “Successor Attorney”) that outlines the responsibilities delegated to the Successor Attorney who will be managing or closing your practice. Include a procedure to enable your Successor Attorney to determine whether your incapacity renders you unable to practice law, and complete, in advance, a medical release and authorization form as required by HIPAA permitting disclosure of medical information to assist in this determination. (See HIPAA release form.) Determine whether the Successor Attorney also will be your personal attorney. Choose a Successor Attorney who is sensitive to conflict of interest issues.
- 7. If your written agreement authorizes the Successor Attorney to sign trust or 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 upon the happening of a specific event. In some instances, you and the Successor Attorney will be required to sign bank forms authorizing the Successor Attorney to have access to your trust or general account. Choose your Successor Attorney wisely for he or she may have access to your clients’ funds.
- 8. Familiarize your Successor Attorney with your office systems and keep him or her apprised of office changes.
- 9. Introduce your Successor Attorney to your office staff. Make certain your staff knows where you keep the written agreement with your Successor Attorney and how to contact the Successor Attorney if an emergency occurs before or after office hours. If you practice without a regular staff, make sure your Successor Attorney knows whom to contact (the landlord, for example) to gain access to your office.
- 10. Inform your spouse or closest living relative and your named executor of the existence of this agreement and how to contact the Successor Attorney.
- 11. Renew your written agreement with your Successor Attorney each year. If you include the name of your Successor Attorney in your retainer agreement, make sure the information concerning that attorney is current.

POWER OF ATTORNEY — LIMITED

I, _____, do hereby 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 bank account(s) and safe deposit box(es). I do further authorize my banking institutions to transact my account(s) as directed by my attorney-in-fact and to afford 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 funds transactions, receive statements and notices on the account(s), and do anything with respect to the account that I would be able to do. I am also authorizing my named 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.

[Accountholder] [Date]

STATE OF GEORGIA)

) ss.

County of)

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

NOTARY PUBLIC

My commission expires:

SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

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

[Attorney-in-Fact] [Date]

STATE OF GEORGIA)

) ss. County of)

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

SUBSCRIBED AND SWORN to before me this day of _____, 20_____.

NOTARY PUBLIC

My commission expires:

NOTICE OF DESIGNATED SUCCESSOR LAWYER

I, _____, have authorized the following lawyer(s) to assist with the closure of my practice:

Name of Authorized Successor Lawyer: Address:
Phone Number:

Name of Successor Lawyer's Alternate: Address:
Phone Number:

[Absent Lawyer] [Date]

MAIL THIS FORM TO ABSENT LAWYER'S PROFESSIONAL LIABILITY INSURER.

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 that 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, 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.
- 4.** You do not have any duty to check with me from time to time to determine if 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]

[Absent Lawyer] [Date]

Succession Planning

What happens to your clients if you suddenly become an “absent attorney,”* one who leaves the practice of law with little to no advance warning, whether due to death, disability or otherwise?

The State Bar of Georgia is implementing a voluntary program where you can notify the State Bar that you have selected someone who can help return your files and other property to your clients in the event that you become an absent attorney.

Beginning this year, your annual State Bar dues notice contains the following language:

NOTICE OF DESIGNATED ATTORNEY

I hereby nominate the following State Bar of Georgia member(s) to assist with coordinating the return of client files and property in the event I become an “absent attorney” as defined under Rule 4-228(a) of the Georgia Rules of Professional Conduct. I have discussed this with the person(s) named below, and they are willing to be considered to serve in this capacity.

NAME

STATE BAR NUMBER

NAME

STATE BAR NUMBER

We encourage all lawyers to participate in this voluntary program. All you have to do is speak with another lawyer and obtain his or her willingness to work with the State Bar to return your files and other property to your clients in the event you become an absent attorney through death, disability or otherwise.

Other states that have implemented this program have seen substantial success in timely transitioning client files to other lawyers. Reciprocal agreements between lawyers to help return client files and property in such events are strongly encouraged.

Remember that the State Bar of Georgia stands ready to assist volunteers. People willing to serve in this capacity are not expected or required to handle any cases, but merely to assist in returning client files and property.

If you have questions, please contact Natalie Kelly, Director of the Law Practice Management Department of the State Bar, at 404-527-8770.

* *Absent Attorney – a member of the State Bar of Georgia (or a foreign or domestic lawyer authorized to practice law in Georgia) who shall have disappeared, died, become disbarred, disciplined or incarcerated, or become so impaired as to be unable to properly represent his or her clients or as to pose a substantial threat of harm to his or her clients or the public as to justify appointment of a Receiver hereunder by the Supreme Court of Georgia. Rule 4-228(a).*

WILL PROVISIONS

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 Successor Lawyer on _____; if that Agreement is not in effect, my personal representative is authorized to enter into a similar agreement or agreements with other lawyers as my personal representative, in his/her sole discretion, may determine to be necessary or desirable to protect the interests of my clients and dispose of my practice.

OR

My personal representative is expressly authorized and directed to take such steps as s/he 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 dispose of that practice, including but not limited to: sale of the practice, collection of accounts receivable, payment of expenses relating to the practice, and employing a lawyer or lawyers to review my files, complete unfinished work, notify my clients of my death and assist them in finding other lawyers, and provide long-term storage of and access to my closed files.

AGREEMENT TO CLOSE LAW PRACTICE IN THE FUTURE¹

This Agreement is entered into this ____ day of _____, 20____, by and between _____ (“Absent Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the Georgia and whose office for the practice of law is located at _____, and (“Successor Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the State of Georgia and whose office for the practice of law is located at _____.

RECITALS

WHEREAS, Absent Attorney is a sole practitioner engaged in the practice of law; and

WHEREAS, Absent Attorney recognizes the importance of protecting the interests of his clients in the event that he is unable to practice law by reason of his death, disability, incapacity or other inability to act; and

WHEREAS, Absent Attorney wishes to plan for the orderly closing of his law practice if he is unable to practice law for any of the above stated reasons; and

WHEREAS, Absent Attorney has requested Successor Attorney to as his agent to take all reasonable actions deemed necessary by Successor Attorney to close Absent Attorney’s practice on account of his inability to act and Successor Attorney has consented to this appointment; and

WHEREAS, Absent Attorney and Successor Attorney hereby enter into this Agreement to define their rights and obligations in connection with the closing of Absent Attorney’s practice.

1. **Effective Date.** This Agreement shall become effective only upon Absent Attorney’s death, disability, incapacity or other inability to act, as determined in accordance with paragraph. The appointment and authority of Successor Attorney shall remain in full force and effect as long as it is reasonable to carry out the terms of this Agreement, or unless sooner terminated pursuant to paragraphs 8 or 9.
2. **Determination of Death, Disability, Incapacity.** Successor Attorney shall make the determination that Absent Attorney is dead, disabled, incapacitated or otherwise unable to practice law, and if disabled or incapacitated that such disability or incapacity is permanent in nature or likely to continue indefinitely. Successor Attorney shall base this determination on communications with the members of Absent Attorney’s family, if available, and at least one written opinion of a licensed physician or other medical professional who either diagnosed, treated or was responsible for the medical care of

¹ To ensure compliance with HIPAA, the Absent Attorney, upon execution of the Agreement to Close Law Practice, should also sign two written authorizations, one to the health care provider, the second with the provider line blank, identifying the Successor Attorney and authorizing the disclosure of information relating to the Absent Attorney’s capacity to practice law upon request by Successor Attorney. See HIPAA release form.

Absent Attorney. As part of the process of determining whether Absent Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law, all individually identifiable health information and medical records may be released to Successor Attorney, even though the authority of the Successor Attorney has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended 42 U.S.C. § 201 and 45 C.F.R. § 160. In reaching the reasonable determination that Absent Attorney is unable to practice law by reason of his death, disability, incapacity or other inability to act, Successor Attorney may also consider the opinions of colleagues, employees, friends or other individuals with whom Absent Attorney maintained a continuous and close relationship. In the event of Absent Attorney's death, Successor Attorney's authority to act under this agreement shall be confirmed in writing by the representative of Absent Attorney's estate. Successor Attorney shall sign an affidavit stating the facts upon which his determination is based, and such affidavit shall, for the purposes of this agreement, be conclusive proof that Absent Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law.

3. **General Power and Appointment of Successor Attorney as Attorney-in-Fact.** Upon reaching the determination that Absent Attorney is unable to continue the practice of law by reason of disability, incapacity or other inability to as provided herein, and is unable to close his practice, Absent Attorney consents to and authorizes Successor Attorney to take all reasonable actions to close Absent Attorney's law practice. Absent Attorney appoints Successor Attorney as his attorney-in-fact with full power to do and accomplish all of the actions expressed and implied by this Agreement as fully and completely as Absent Attorney would do personally but for his inability.
4. **Specific Powers.** Absent Attorney consents to and authorizes the following actions by Successor Attorney in addition to any other actions Successor Attorney in his sole discretion deems reasonable to carry out the terms of this Agreement:
 - a. **Access to Absent Attorney's Office.** To enter Absent Attorney's office and use his equipment and supplies as needed to close Absent Attorney's practice.
 - b. **Designation as Signatory on Financial Accounts.** To replace Absent Attorney as signatory on all of Absent Attorney's law office accounts with any bank or financial institution may rely on this authorization unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.
 - c. **Opening of Mail and/or Emails.** To receive, sign for open and review Absent Attorney's law practice mails and emails and to process and respond to them, as necessary.
 - d. **Possession of Property.** To take possession, custody and control over all of Absent Attorney's property relating to his law practice, real and personal, including client files and records.

- e. **Access to and Inventory/Examination of Files.** To enter any storage location where Absent Attorney maintained his files and to inventory and examine all client case files, including client interest with a specific file or client, he shall assign the file to the Alternate Successor Attorney in accordance with paragraph 8(b). Any confidential information learned by the Successor Attorney must not be revealed by him and consideration must be given as to whether the Successor Attorney may continue to represent his own client.
- f. **Notification to Clients.** To notify clients, potential clients and those who appear to be clients, of Absent Attorney's death, disability, incapacity or other inability to act, and to take whatever action Successor Attorney deems appropriate to protect the interests of the clients, including advising clients to obtain substitute counsel.
- g. **Transfer of Files.** To safeguard files and arrange for their return to clients, obtain consent from clients to transfer files to new attorneys, transfer files and property to clients or their new attorneys and to obtain receipts therefor.
- h. **Storage of Files and Attorney's Records.** To arrange for storage of closed files, unclaimed files, and trust account records that must be preserved for six (6) years under Rule 1.15(I)(a) of the Georgia Rules of Professional Conduct.
- i. **Transfer of Original Documents.** To arrange for and transfer to clients all original documents including wills, trusts and deeds, unless other acceptable arrangements can be made.
- j. **Extensions of Time.** To obtain client's consent for extensions of time, contact opposing counsel and courts/administrative agencies to obtain extensions of time, and apply for extensions of time, if necessary, pending employment of new counsel by clients.
- k. **Litigation.** To file motions, pleadings, appear before court, and take any other necessary steps where the clients' interests must be immediately protected pending retention of other counsel.
- l. **Notification to Courts and Others.** To contact all appropriate agencies, courts, adversaries and other attorneys, professional membership organizations such as the State Bar of Georgia or local bar associations, the Office of Court Administration, and any other individual or organization that may be affected by Successor Attorney's inability to practice law and advise them of Absent Attorney's death or other inability to act and further advise that Absent Attorney has given this authorization to Successor Attorney.
- m. **Collection of Fees and Return of Client Funds.** To send out invoices for unbilled work by Absent Attorney and outstanding invoices, to prepare an accounting for clients on retainer, including return of client funds, to collect fees and accounts

receivables and, if deemed necessary or appropriate by Successor Attorney, to arbitrate or litigate fee disputes or otherwise collect accounts receivables on behalf of Absent Attorney or Absent Attorney's estate and to prepare an accounting of each client's escrow fund and arrange for transfer of escrow funds, including obtaining consent from clients to transfer escrow funds and acknowledge receipt of escrow funds by Absent Attorney, other counsel or client.

- n. **Payment of Business Expenses to Creditors.** To pay business expenses such as office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel, to determine the nature and amount of all claims of creditors including clients of Absent Attorney and to pay or settle same.
- o. **Personnel.** To continue the employment of Absent Attorney's employees and other personnel to the extent necessary to assist Successor Attorney in the performance of his duties, to compensate and to terminate such employees or other personnel, to employ new employees or other personnel if their employment is reasonably necessary to Successor Attorney's performance of his duties hereunder, to employ or dismiss agents, accountants, attorneys or others and to reasonably compensate them.
- p. **Termination of Obligations.** To terminate or cancel legal, commercial or business obligations of Absent Attorney including, if reasonable under the circumstances, terminating, cancelling, extending or modifying any office lease or lease of equipment, such as a copier, computer or other equipment.
- q. **Insurance.** To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability, or other office insurance of Absent Attorney, to notify any professional liability insurance carriers of Absent Attorney's coverage, including the addition of Successor Attorney as an insured under said policy.
- r. **Taxes.** To prepare, execute file or amend income, information or other tax returns or forms and to act on behalf of Absent Attorney's law practice in dealing with the Internal Revenue Service, any division of the Georgia Department of Revenue, or any office of any other tax department or agency.
- s. **Settlement of Claims.** To settle, compromise, or submit to arbitration or mediation all debts, taxes, accounts, claims, or disputes between Absent Attorney's law practice and any other person or entity and to commence or defend all actions affecting Absent Attorney's law practice.
- t. **Execution of Instruments.** To execute, as Absent Attorney's attorney-in-fact, any deed, contract, affidavit or other instrument on behalf of Absent Attorney.
- u. **Attorney as Fiduciary.** To resign any position which Absent Attorney holds as a fiduciary, such as executor or trustee, and to notify other named fiduciaries, if

any, and beneficiaries of the estate or trust; if the trust or will does not name a successor fiduciary, to apply to the court for appointment of a successor fiduciary and to confer with the personal representative of the Absent Attorney's estate with respect to the obligation of such personal representative to account for the assets of the estate or trust that Absent Attorney was administering.

- v. **Power of Sale and Disposition.** To sell or otherwise arrange for disposition of the Absent Attorney's furniture, books or other personal property, whether located in Absent Attorney's law office or off-site, so long as such property is incidental to his law practice.
- w. **Representation of Absent Attorney's Clients.** To provide legal services to Absent Attorney's clients, provided that Successor Attorney has no conflict of interest, obtains the consent of Absent Attorney's clients, and does not engage in conduct that violates Rules 1.7, 1.8, and 1.10, respectively, of the Georgia Rules of Professional Conduct. If Absent Attorney's clients engage Successor Attorney to perform legal services, Successor Attorney shall have the right to payment for such services from such clients.
- x. **Access to Safe Deposit Box.** To open Absent Attorney's safe deposit box used for his law practice, to inventory same, and to arrange for the return of property to clients.

5. **Preservation of Attorney-Client Privilege and Confidences and Secrets of Client.** Successor Attorney shall maintain the confidences and secrets of a client and protect the attorney-client privilege as if Successor Attorney represented the clients of Absent Attorney.

6. **Sale of Absent Attorney's Practice.** In the event of Absent Attorney's death, disability, incapacity, or other inability to act, Successor Attorney shall have the power to sell Absent Attorney's law practice in accordance with Rule 1.17 of the Georgia Rules of Professional Conduct. In the case of the death of Absent Attorney, the sale shall be approved by the Executor or Administrator of Absent Attorney's estate or other personal representative of the deceased Absent Attorney. Such power shall include, without limitation, the authority to sell all assets of the Absent Attorney's practice such as good will; client files and fixed assets such as furniture and books; to advertise Absent Attorney's law practice; to arrange for appraisals; and to retain professionals such as lawyers and accountants to assist Successor Attorney in the sale of the practice. Upon the sale of the practice, Successor Attorney will pay Absent Attorney or Absent Attorney's estate all net proceeds of sale.

[Note: Absent Attorney should consider adding a provision to his Will specifying the manner in which the sale of the law practice shall be conducted, such as whether the sale shall be consummated by Successor Attorney, Executor or Administrator and by what method of valuation.]

7. Compensation. Successor Attorney shall be paid reasonable compensation for the services performed in closing the law practice of Absent Attorney. Such compensation shall be based upon the time allocated to and complexity associated with successfully closing the law practice. Successor Attorney agrees to maintain accurate and complete time records for the purpose of determining his compensation. Successor Attorney's compensation shall be paid from the funds of Absent Attorney's law practice.
8. **Resignation of Successor Attorney and Appointment of Alternate Successor Attorney.**
- a. Prior to the effective date of this agreement, Successor Attorney may resign at any time by giving written notice to Absent Attorney when possible. After the effective date of this Agreement, Successor Attorney may resign by giving sixty (60) days written notice to Absent Attorney, or if Absent Attorney is deceased to Absent Attorney's Executor or Administrator, subject to any ethical or professional obligation to continue or complete any matter to which Successor Attorney assumed responsibility.
 - b. If Successor Attorney resigns or otherwise is unable to serve, Absent Attorney appoints _____ as Alternate Successor Attorney, and Alternate Successor Attorney consents to this appointment as evidenced by his signature to this Agreement. Alternate Successor Attorney shall have all the rights and powers, and be subject to all the duties and obligations of Successor Attorney. During the tenure of Successor Attorney, Alternate Successor Attorney shall review and take any necessary action with respect to those client files of Absent Attorney in which Successor Attorney identifies a conflict or potential conflict of interest.
 - c. In the event of Successor Attorney's resignation or inability to serve, Successor Attorney shall provide five (5) days written notice thereof to Alternate Successor Attorney at his address set forth below.
 - d. Successor Attorney or Alternate Successor Attorney shall not be required to post any bond or other security to act in their capacity.
9. **Liability and Indemnification of Successor Attorney.** Successor Attorney shall not be liable to Absent Attorney or Absent Attorney's estate for any act or failure to act in the performance of his duties hereunder, except for willful misconduct or gross negligence. Absent Attorney agrees to indemnify and hold harmless Successor Party from any claims, loss or damage arising out of any act or omission by Successor Attorney under this Agreement, except for liability or expense arising from Successor Attorney's willful misconduct or gross negligence. This indemnification does not extend to any acts, errors or omissions of Successor Attorney while rendering or failing to render professional services as attorney for former clients of Absent Attorney.
10. **Revocation, Amendment and Termination.**

- a. After the effective date of this Agreement, Absent Attorney may at any time remove or replace Successor Attorney or Alternate Successor Attorney, or revoke, amend or alter this Agreement by written instrument delivered to Successor Attorney and Alternate Successor Attorney, and such removal, replacement or revocation, as the case may be, shall be effective within three (3) days of the transmission of such written instrument to Successor Attorney and Alternate Successor Attorney; provided, however, that any amendment modifying Successor Attorney's obligations hereunder or his compensation hereunder shall require Successor Attorney's prior written consent to be made effective.
- b. This Agreement shall terminate upon (i) delivery of written notice of termination by Absent Attorney to Successor Attorney and Alternate Successor Attorney; in accordance with this Section 10; or (ii) delivery of a written notice of termination to Successor Attorney by the Executor or Administrator of Absent Attorney's estate upon a showing of good cause, or by a Guardian of the property of Absent Attorney appointed under O.C.G.A. § 29-4-42.

11. **Miscellaneous.**

- a. This Agreement shall be governed and interpreted in all respects by the laws of the State of Georgia.
- b. Whenever necessary or appropriate for the interpretation of this Agreement, the gender herein shall be deemed to include the other gender and the use of either the singular or the plural shall be deemed to include the other.
- c. The paragraph headings are for convenience only and are not to be relied upon for interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Absent Attorney

Date

[INSERT ADDRESS & OTHER CONTACT INFO]

Successor Attorney

Date

[INSERT ADDRESS & OTHER CONTACT INFO]

Alternate Successor Attorney

Date

[INSERT ADDRESS & OTHER CONTACT INFO]

AGREEMENT TO CLOSE LAW PRACTICE — SHORT FORM

The sample *Authorization and Consent to Close Law Office Agreement* provided on the next page includes authorization to sign on your bank accounts (trust and general) and to close your law practice. It does not include a provision for payment to the Successor Lawyer, a description of termination powers, consent to represent the Absent Lawyer's clients, or other provisions included in the sample *Agreement to Close Law Practice in the Future*.

AUTHORIZATION AND CONSENT TO CLOSE LAW OFFICE

This Authorization and Consent is entered into this _____ day of _____, by and between _____ and _____.

I, _____ (“Absent Attorney”), a sole practitioner who engages in the practice of law and has a principal office located at _____, authorize _____, (“Successor Attorney”) who engages in the practice of law and has a principal office located at _____, to take all actions reasonable to close my law practice upon my death, disability, or incapacity. These actions include but are not limited to:

- Entering my office and utilizing my equipment and supplies as needed to close my law practice;
- Opening and processing my mail;
- Taking possession and control of all property in my law office or incidental to my law practice including client files and records;
- Examining files and records of my law practice and obtaining information concerning any pending matters that may require attention, except for those files in which Successor Attorney has a conflict of interest;
- 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;
- Scanning or copying my files;
- Obtaining clients’ consent to transfer files and clients’ property to new counsel;
- Transferring client files and property to clients or their new counsel;
- 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 engagement of other counsel by my clients;
- Filing notices, motions, and pleadings on behalf of my clients where their interests must be immediately protected and other legal counsel has not yet been retained;

- Contacting all appropriate persons, entities and professional organizations that may be affected by my inability to practice law and notifying them that I have given this authorization;
- Signing checks to draw funds from or making deposits to my bank, attorney trust or escrow account and providing an accounting to my clients of funds held in trust; and
- Contacting my professional liability insurer concerning claims and potential claims.

My 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.

The determination concerning my death, disability, impairment, or incapacity shall be made by Successor Attorney on the basis of evidence deemed reasonably reliable, including but not limited to communications with members of my immediate family, if available, or a written opinion of one or more duly licensed physicians. Upon such evidence, Successor Attorney is relieved from any responsibility or liability for acting in good faith in carrying out the provisions of this Authorization and Consent.

To the fullest extent permitted by law, Successor Attorney agrees to preserve client confidences and secrets and to observe and comply with the attorney-client privilege of my clients, further agrees to make disclosures only to the extent reasonably necessary to carry out the purpose of this Authorization and Consent. Successor Attorney is appointed as my agent 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.

I appoint Successor Attorney as signatory on my lawyer trust account(s) upon my death, disability, impairment, or incapacity.

I understand that the Successor Attorney will not process, pay, or in any other way be responsible for payment of my personal bills.

I agree to indemnify Successor Attorney against any claims, losses or damages arising out of any acts or omissions by Successor under this Agreement, provided the actions or omissions of the Successor Attorney were in good faith and in a manner reasonably believed to be in my best interest. The Successor Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

Successor Attorney shall be paid reasonable compensation for services rendered in Successor my law office.

Successor Attorney may revoke this acceptance at any time prior to my death or disability and, after such time, Successor Attorney has the power to appoint a Successor Attorney to serve in his place. Prior to my death or disability, I may revoke this Authorization and Consent by written notification to Successor Attorney.

Absent Attorney

Date

[Insert Address and Other Contact Information]

Successor Attorney

Date

[Insert Address and Other Contact Information]

ACKNOWLEDGMENTS

LIMITED POWER OF ATTORNEY TO MANAGE LAW PRACTICE AT A FUTURE DATE

I, _____ (Name of Principal), an attorney licensed and in good standing to practice law in the State of Georgia with offices located at _____, do hereby appoint _____ (Name of Agent), an attorney licensed and in good standing to practice law in the State of Georgia with offices located at _____, as my Agent and attorney-in-fact to act for me in my name and on my behalf as hereinafter provided. This Limited Power of Attorney shall become and remain effective, however, only upon and during managing my incapacity by reason of my disappearance, disability, or other disability, or other inability to act which renders me incapable of managing my law practice or representing my clients in a competent manner. Determination of my incapacity shall be made by me or written certification by:

- (i) a physician duly licensed to practice medicine who has treated me within one (1) year preceding the date of such certification [or consider two physicians]:

or

- (ii) my Agent, who shall base his finding on reliable resources, including one or more members of my immediate family, a written opinion of one or more licensed physicians who diagnosed or treated me within one (1) year preceding the date of my incapacity, or my law firm colleagues and/or my office staff with whom I maintained a close and continuous relationship during the period immediately preceding my incapacity.

or

- (iii) [name and address of other person(s) and statement of conditions, if any].

As part of the process in determining whether I am incapable of managing my law practice or representing my clients in a competent manner, all individually identifiable health information and medical records may be released to my Agent even though such Agent's appointment has not yet become effective [or, if the Absent Attorney has selected a person other than the Agent to make the determination of incapacity, insert such other person's name]. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) 42 U.S.C. § 201 et seq. 45 C.F.R. § 160-164.¹

I hereby appoint my Agent, for the sole and limited purpose and in my name and stead, to conduct all matters and manage my property, whether real or personal, related to or associated

¹ To ensure compliance with HIPAA, the Absent Attorney should also sign two (2) written authorizations, one to his health care provider, and the second with the provider line blank, identifying Agent or other party who will be making the decision that the principal is incapable of managing his law practice. See HIPAA release form.

with my law practice in any way wherein I might act if I were present and both capable and competent, to the extent I am permitted by law to act through such an agent. These powers shall include not be limited to, the following.²

- (a) **Access to my Office.** To enter my office, take possession, custody and control of all my office property, real and personal, including client files, office equipment, supplies and records, and to use such property to service my clients or manage and/or close my law practice;
- (b) **Designation as Signatory on Financial Accounts.** To replace me as signatory on all my law office accounts with any bank or financial institution, including limitation attorney trust, escrow or special accounts and checking or savings accounts, and my banks or financial institutions shall rely upon this authorization unless they have received notice or have knowledge that this instrument has been revoked or is no longer in effect;
- (c) **Opening of Mail and/or Email.** To receive, sign for and open and review my mail and email, and to process and respond to same as necessary.
- (d) **Access to and Inventory/Examination of Files.** To enter any storage location where I maintain my files (whether in my office or off site), inventory and examine all my client case files, property and records and, should he identify a conflict of interest concerning a specific client, obtain consent of such client to transfer his files to my Successor Agent name herein or to such other attorney;
- (e) **Notification to Clients.** To notify my clients, potential clients and those who appear to be my clients of my inability to act, and to take whatever action he may deem necessary or appropriate to protect the interests of such persons or entities, including advising them to obtain substitute counsel.
- (f) **Transfer of Files.** To safeguard and return my clients' files upon request or as otherwise may be appropriate, or to obtain consent from them to transfer their files to new counsel, all upon written acknowledgment of receipt and acceptance thereof;
- (g) **Storage of Files and Records.** To arrange for the storage of those of my closed and unclaimed files and records required to be preserved pursuant to Rule 1.15 (I)(a).
- (h) **Transfer of Property and Original Documents.** To transfer to my clients where appropriate, or to their designees, all their property and original documents, including wills, trusts and deeds;
- (i) **Access to Safe Deposit Box.** To open my safe deposit box used for my law practice, to inventory same, and arrange for the return of any property contained therein to my clients.

² Please note that the powers described in this sample Power of Attorney are broad and should be tailored to the Principal's preferences.

- (j) **Notification to Courts and Others.** To advise all appropriate courts, agencies, opposing and other counsel, professional membership organizations such as the State Bar of Georgia and/or local bar association, the Office of Court Administration, and other appropriate individuals, organizations or entities, of my inability to act and of my Agent's authority to act on my behalf;
- (k) **Extensions of Time.** To obtain consent from my clients for extensions of time, contact opposing counsel and courts/administrative agencies to obtain extensions of time, and apply for such extensions, if necessary, pending my clients' retention of new counsel;
- (l) **Litigation.** To file pleadings, motions and other documents, appear before courts, at administrative hearings, offices and agencies, and take any and all other steps necessary to protect my clients' interests until their retention of new counsel;
- (m) **Collection of Fees and Return of Client Funds.** To dispatch invoices for my unbilled work, collect fees and accounts receivable on my behalf, or submit to arbitration or mediation all fees, claims, or disputes relating to the collection of any accounts receivable, to prepare accountings of clients on retainer, to return client funds where appropriate, prepare an accounting of client escrow accounts and arrange for transfer of escrow funds, including obtaining consent to transfer such funds to new counsel or to my clients as appropriate;
- (n) **Payment of Business Expenses and Creditors.** To pay my business expenses, including office rent, rent for leased equipment, library expenses, salaries to employees or other personnel, and determine the nature and amount of all claims of creditors, including my clients, and pay or settle all such claims or accounts;
- (o) **Personnel.** To continue to employ such of my office staff as may be necessary to assist my Agent in the performance of his duties and to compensate them therefor; or terminate such employees or other personnel, or employ such assistants, agents, accountants, attorneys or others as may be appropriate;
- (p) **Termination of Obligations.** To terminate or cancel my business obligations, including office and equipment leases, whether substantial or de minimis;
- (q) **Insurance.** To purchase, renew, maintain, cancel, make claims for or collect benefits under any fire, casualty, professional liability insurance, or other office insurance and notify as appropriate all professional liability insurance carriers of my disability, incapacity or other inability to act, and cooperate with such insurance carriers regarding matters related to my coverage, including the addition of Agent as an insured under any such policies;
- (r) **Taxes.** To prepare, execute and file income, information or other tax returns, reports or other forms and act on my behalf in dealing with the Internal Revenue Service,

the Georgia Department of Revenue, or any other federal, state and local tax departments, agents or authorities;

(s) **Disposition of Debts and Claims.** To prosecute, settle, defend, compromise, or submit to arbitration or mediation all debts, taxes, accounts, claims, or disputes involving my law practice or any person or entity;

(t) **Attorney as Fiduciary.** To resign any position which I hold as a trustee or fiduciary and notify all other affected trustees or fiduciaries and beneficiaries thereof, and whenever appropriate apply to any court of competent jurisdiction for the appointment of a successor fiduciary, and account for the assets, income and disbursements attendant upon each such resigned trustee or fiduciary appointment;

(u) **Power of Sale and Disposition.** To sell or otherwise arrange for the sale or other disposition of my office furniture, books or other office property; and

(v) **Representation of My Clients.** To provide legal services to my clients, provided that my Agent has no conflict of interest, obtains the consent of my clients, and does not engage in conduct that violates the Georgia Bar Rules of Professional Conduct. If my clients engage my Agent to perform legal services, he shall have the right to compensation for such services.

I hereby reserve the right to revoke this Limited Power of Attorney by written instrument, which shall not affect the validity of any actions taken by my Agent prior to any such revocation.

To induce third parties to act hereunder, I hereby agree that any third party receiving a duly executed original copy of this instrument, or a copy certified in such manner as to make it valid and effective as provided by law; may act hereunder, and that the revocation or termination of this instrument shall be ineffective as to any such third party unless or until such third party has knowledge or receives notice of such revocation or termination I hereby agree to indemnify and hold harmless any such third party against any claim(s) that may arise against such third party by reason of such party having relied upon the provisions of this instrument.

If _____ (name of Agent) is unable or unwilling to serve as my Agent hereunder, or no longer practices law, I hereby appoint _____ (name of Successor Agent), an attorney licensed and in good standing to practice law in the State of Georgia with offices located at _____, to be my Agent for the limited purposes set forth herein.

This Limited Power of Attorney shall not be affected by my subsequent disability or incapacity, and shall be governed in all aspects by the laws of the State of Georgia.

(Name of Principal)

(Insert Contact Information)

STATE OF GEORGIA)
)ss.:
COUNTY OF)

On this day of _____, 20_____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

SPECIAL PROVISIONS FOR ATTORNEY'S WILL: INSTRUCTIONS REGARDING MY LAW PRACTICE

I currently practice law as a solo practitioner. In order to provide a smooth transition for my clients and to assist my family, I am providing these guidelines to my Executor and any attorney(s) representing my Executor.

If my practice can be sold to a competent lawyer, I authorize my Executor to make such sale for such price and upon such terms as my Executor may negotiate, subject, however, to compliance with Georgia's Rules of Professional Conduct and other applicable provisions of law. If such sale is possible, I believe that it will provide maximum benefits for my clients as well as my employees and family. [It is my preference that the practice be sold to my associate, _____[name], if satisfactory terms can be reached with respect to such a sale; (or It is my wish that my Executor first consider a sale of my practice to my colleague, _____[name], if satisfactory terms can be reached with respect to such a sale . . .).

Such a sale should include the transfer of all my client files (and his agreement to hold the same or to transfer them to any clients requesting such transfer), as well as all office furnishings and equipment, books, and rights under my office lease and any outstanding contracts with my firm, such as software and publishing companies, equipment leases, . . .].

If my practice cannot be sold and I have active client files, I recommend that, subject to consent of my clients, estate planning and probate files be referred to (name); real estate files to (name); corporation, partnership, and limited liability company files to (name); family law matters to (name); and personal injury files to (name).

In either instance, I recognize that my practice has developed because of personal relationships with my clients and that they are free to disregard my suggestions.

Regardless of the method of disposing of my practice, I authorize my Executor to take all actions necessary to close my law practice and dispose of its assets. In doing so and without limiting the foregoing, my Executor may do each of the following:

- (a) Engage one or more attorneys to wind up my law practice, make arrangements to complete work on active files and to allocate compensation for past and future services.
- (b) Continue employment of staff members to assist in closing my practice and arrange for their payment, and to offer key staff members such incentives as may be appropriate to continue such employment for as long as my Executor deems it appropriate.

- (c) Request that the attorney(s) engaged to wind up the practice, with my Executor's assistance, where appropriate:
- (i) Enter my office and utilize my equipment and supplies as helpful in closing my practice.
 - (ii) Obtain access to my safe deposit boxes and obtain possession of items belonging to clients.
 - (iii) Take possession and control of all assets of my law practice including client files and records.
 - (iv) Open and process my mail and email.
 - (v) Examine my calendar, files, and records to obtain information about pending matters that may require attention.
 - (vi) Notify courts agencies, opposing counsel, and other appropriate entities of my death and, with client consent, seek and obtain extensions of time.
 - (vii) Notify clients and those who appear to be clients of my death and that it is in their best interests to obtain other counsel.
 - (viii) Obtain client consent to transfer client property and assets to other counsel.
 - (ix) Provide clients with their property and assets and copies of material in their files and return unearned retainers and deposits.
 - (x) File notices, motions and pleadings on behalf of clients who cannot be contacted prior to immediately required action.
 - (xi) Contact my malpractice carrier concerning claims or potential claims, to notify of my death, and to obtain extended reporting or "tail" coverage.
 - (xii) Dispose of closed and inactive files by delivery to clients, storage, and arranging for destruction, remembering that certain records are to be preserved for a period of time in accordance with applicable ethics and court rules and best professional practice, and that files relating to minors should be kept for five years after the minor's eighteenth birthday.
 - (xiii) Send statements for unbilled services and expenses and assist in collecting receivables.

- (xiv) Pay current liabilities and expenses of my practice, terminate leases, and discontinue subscriptions, listing, and memberships.
- (xv) Determine if I was serving as registered agent for any corporations and, if so, notify the corporation of the need to designate a new registered agent (and perhaps registered address).
- (xvi) Determine if I was serving as an Executor or Trustee of any estate or trust, or in any other fiduciary capacity and, if so, determine the appropriate parties to be notified of the need, if any, to designate a successor fiduciary; take the steps deemed necessary to obtain discharge of my responsibilities in such fiduciary capacity.
- (xvii) Rent or lease alternative space if a smaller office would serve as well as my present office.

In performing the foregoing, my Executor is to preserve client confidences and secrets and the attorney-client privilege and to make disclosure only to the extent necessary for such purposes. For example: Client files are to be reviewed only by employees of my firm, to whom attorney-client privilege attaches (e.g., my secretary, my paralegal, my associates (if any), or attorneys retained by my Executor to assist him in closing the practice). It is for this reason that I have authorized my Executor to retain the services of these personnel, and to give them sufficient incentives to remain in the employ of the firm through its wind-up. Though there are special rules permitting disclosure of certain client information in connection with the sale of a practice, my Executor is to abide scrupulously with such rules. My Executor may rely on employees of my firm to (i) supply data concerning the outstanding fees owed by my clients at the time of my death, and the unused retainers paid by clients for which services have not yet been rendered; (ii) to communicate with clients concerning the disposition of their files; and (iii) to review clients' files in response to any inquiries that arise in the course of my estate's administration.

My Executor shall be indemnified against claims of loss or damage arising out of any acts or omissions where such acts or omissions were in good faith and reasonably believed to be in the best interest of my estate and were not the result of gross negligence or willful misconduct, or, if my Executor is an attorney licensed to practice in Georgia, such acts or omissions did not relate to my Executor's representation of clients as an attorney retained by those clients. Any such indemnity shall be satisfied first from assets of my law practice, including my malpractice insurance coverage.

**GEORGIA HIPAA COMPLIANT AUTHORIZATION FOR THE RELEASE
OF PATIENT INFORMATION PURSUANT TO 45 CFR 164.508**

TO: _____
Name of Healthcare Provider/Physician/Facility/Medicare Contractor

Street Address

City, State and Zip Code

RE: Patient Name: _____

Date of Birth: _____ Social Security Number: _____

I authorize and request the disclosure of all protected information for the purpose of review and evaluation in connection with a legal claim. I expressly request that the designated record custodian of all covered entities under HIPAA identified above disclose full and complete protected medical information including the following:

- ☐ All medical records, meaning every page in my record, including but not limited to: office notes, face sheets, history and physical, consultation notes, inpatient, outpatient and emergency room treatment, all clinical charts, reports, order sheets, progress notes, nurse's notes, social worker records, clinic records, treatment plans, admission records, discharge summaries, requests for and reports of consultations, documents, correspondence, test results, statements, questionnaires/histories, correspondence, photographs, videotapes, telephone messages, and records received by other medical providers.
- ☐ All physical, occupational and rehab requests, consultations and progress notes.
- ☐ All disability, Medicaid or Medicare records including claim forms and record of denial of benefits.
- ☐ All employment, personnel or wage records.
- ☐ All autopsy, laboratory, histology, cytology, pathology, immunohistochemistry records and specimens; radiology records and films including CT scan, MRI, MRA, EMG, bone scan, myelogram; nerve conduction study, echocardiogram and cardiac catheterization results, videos/CDs/films/reels and reports.
- ☐ All pharmacy/prescription records including NDC numbers and drug information handouts/monographs.
- ☐ All billing records including all statements, insurance claim forms, itemized bills, and records of billing to third party payers and payment or denial of benefits for the period _____ to _____.

I understand the information to be released or disclosed may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), or human

immunodeficiency virus (HIV), and alcohol and drug abuse. I authorize the release or disclosure of this type of information.

This protected health information is disclosed for the following purposes: _____

This authorization is given in compliance with the federal consent requirements for release of alcohol or substance abuse records of 42 CFR 2.31, the restrictions of which have been specifically considered and expressly waived.

You are authorized to release the above records to the following representatives of defendants in the above-entitled matter who have agreed to pay reasonable charges made by you to supply copies of such records:

Name of Representative

Representative Capacity (e.g. attorney, records requestor, agent, etc.)

Street Address

City, State and Zip Code

I understand the following: See CFR §164.508(c)(2)(i-iii)

- a. I have a right to revoke this authorization in writing at any time, except to the extent information has been released in reliance upon this authorization.
- b. The information released in response to this authorization may be re-disclosed to other parties.
- c. My treatment or payment for my treatment cannot be conditioned on the signing of this authorization.

Any facsimile, copy or photocopy of the authorization shall authorize you to release the records requested herein. This authorization shall be in force and effect until two years from date of execution at which time this authorization expires.

Signature of Patient or Legally Authorized Representative
(See 45CFR § 164.508(c)(1)(vi))

Date

Name and Relationship of Legally Authorized Representative to Patient
(See 45CFR §164.508(c)(1)(iv))

Witness Signature

Date

SAMPLE FEE AGREEMENTS AND ENGAGEMENT LETTER WITH SUCCESSOR LAWYER PROVISIONS

The *Agreements* on the following pages includes a provision that Absent Attorney may appoint another lawyer within to assist with closing of law practice.

Sample Written Fee Agreement Hourly Litigation

**LAW FIRM NAME
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER**

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS.

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES.

Client hires lawyer to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent client. Attorney will take reasonable steps to keep Client informed of progress and to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter claim in Client’s case. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

3. CLIENT.

The Attorney is representing the Client (NAME) only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise, in this matter, that lawyer's duty is to act in the best interest of the Client and attorney cannot share information about Client's case with anyone other than Client without express permission.

4. CLIENT'S DUTIES.

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings with Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

5. DEPOSIT.

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposits, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed _____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's fees and costs _____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within _____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to withdraw the amount that is identified in the objection shall be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than _____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within _____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] at

any time before a trial or arbitration date is set. Once a trial or arbitration date is set, Client will pay all sums then owing and deposit the Attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

6. LEGAL FEES AND BILLING PRACTICES.

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spend on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of Georgia and/or applicable law.

The time charged with include, but is not limited to, the time Attorney spends on telephone calls, emails and other electronic communications relating to Client's matter, including calls and emails to with Client, witnesses, opposing counsel, court personnel or other persons. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.] Time is billed in minimum increments one-tenth (.1) of an hour. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

7. COSTS AND OTHER CHARGES.

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, translator/interpreter fees, jury fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [_____]

[PROVIDE RATE] cents per page; (3) facsimile charges – [_____] [PROVIDE RATE] cents per page; (4) postage at cost; and (5) computerized legal research at cost.

- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged _____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

8. OTHER FEES AND COSTS.

Client understands that if Client's case proceeds to court action or arbitration, the court may award attorney fees as well as some or all of the type of costs enumerated in Paragraph 7 above to the other party or parties. Payment of such attorney fees and costs shall be the sole responsibility of Client. Similarly, other parties may be required to pay some or all of the fees and costs incurred by the Client. Client acknowledges that any such determination does not in and of itself affect the amount of the fees and costs to be paid by Client to Attorney pursuant to this agreement.

9. BILLS.

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within _____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

10. CLIENT APPROVAL NECESSARY FOR SETTLEMENT.

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

11. DISCHARGE AND WITHDRAWAL.

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of Georgia and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably

difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

12. CONCLUSION OF SERVICES.

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or deposited of it consistent with Client's directions, Attorney will retain the case file for a period of _____, [PROVIDE LENGTH OF TIME] after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____, [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 1.16(d) of the Georgia Rules of Professional Conduct.

13. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE.

Attorney is informing Client in writing that Attorney _____ has _____ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

14. NO TAX ADVICE.

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

15. ENTIRE AGREEMENT.

This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. MODIFICATION BY SUBSEQUENT AGREEMENT.

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

18. EFFECTIVE DATE.

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

19. Attorney may appoint another attorney to assist with the closure of Attorney's office in the event of Lawyer's death, disability, impairment, or incapacity. In such event, Client agrees that the Successor Attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law practice.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____
ATTORNEY

**Sample Written Fee Agreement
Hourly Non-Litigation**

**LAW FIRM NAME
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER**

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS.

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 6; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES.

Client hires lawyer to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent client. Attorney will take reasonable steps to keep Client informed of progress and to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

3. CLIENT.

The Attorney is representing the Client (NAME) only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise, in this matter, that lawyer’s duty is to act in the best interest of the Client and attorney cannot share information about Client’s case with anyone other than Client without express permission.

4. **CLIENT DUTIES.**

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents.

5. **RESPONSIBILITIES OF THE PARTIES.** Client agrees to be truthful with Attorney to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this agreement, and to pay Attorney's bills on time. Further, while it is impossible to predict the course of a representation, it may be important for Attorney to contact Client immediately, or upon short notice, to confer with Client regarding the status of Client's case. An inability to do so may result in Client's case being prejudiced and detrimentally affect the outcome of the case. Accordingly, Client agrees to keep Attorney informed of Client's current address, telephone number and whereabouts. If Client leaves town, for example, to travel on business or vacation, Client agrees to notify Attorney before leaving of the expected duration of the trip and how Client may be contacted in the meantime.

6. **DEPOSIT (ADVANCED FEE).**

Client agrees to pay Lawyer an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposit, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed _____ [PROVIDE NUMBER] days after the date a bill is sent to the Client. If Attorney receives a written objection from Client within _____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed., and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than _____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney shall not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits (advanced fees) after the initial deposit within _____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from

any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to the client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT].

7. LEGAL FEES AND BILLING PRACTICES.

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____ /hour
Partners	_____ /hour
Associates	_____ /hour
Paralegals	_____ /hour
Law clerks	_____ /hour

Interest charges:

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and emails with Client and other parties and attorneys.

[OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent]. Time is billed in minimum increments of one-tenth (.1) of an hour. Attorney will charge for waiting time and for travel time, both local and out of town.

8. COSTS AND EXPENSES

- (a) In General. Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproductions costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [_____] [PROVIDE RATE] cents per page; (4) postage costs; and (5) computerized legal research at cost.

- (b) Out-of-Town Travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged ____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.

ALTERNATE ONE

- (c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. Attorney will consult with client on the selection of any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

ALTERNATE TWO

- (c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Attorney will select, any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Attorney's judgment unless one or both of the clauses below are initialed by Attorney.

Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

9. BILLING STATEMENTS.

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within _____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney, will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expenses portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

10. CLIENT APPROVAL NECESSARY FOR SETTLEMENT.

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

11. DISCHARGE AND WITHDRAWAL.

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of Georgia and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by the Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

12. CONCLUSION OF SERVICES.

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or third party, Attorney is authorized to retain copies of the case file. Client papers and property as defined in Rule 1.15(I) of the Georgia Rules of Professional Conduct.

13. DISCLAIMER OF GUARANTEE AND ESTIMATES.

Nothing in this agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

14. ENTIRE AGREEMENT.

This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. MODIFICATION BY SUBSEQUENT AGREEMENT.

This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

17. EFFECTIVE DATE. This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

18. Attorney may appoint another attorney to assist with the closure of Attorney's office in the event of Lawyer's death, disability, impairment, or incapacity. In such event, Client agrees that the Successor Attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law practice.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

Sample Written Fee Agreement Contingency Fee Agreement

**LAW FIRM NAME
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER**

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS.

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES.

Client hires lawyer to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent client. Attorney will take reasonable steps to keep Client informed of progress and to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter claim in Client’s case. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

3. CLIENT.

The Attorney is representing the Client (NAME) only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or

otherwise, in this matter, that lawyer's duty is to act in the best interest of the Client and attorney cannot share information about Client's case with anyone other than Client without express permission.

4. CLIENT'S DUTIES.

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings with Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

5. LEGAL FEES.

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 6. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award will be part of Client's net recovery and the contingent fee will be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs. Net recovery will also include the reasonable value of any non-monetary proceeds.

Attorney's fees will be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery;
- (b) If the matter is resolved prior to _____ [PROVIDE NUMBER] days before the initial trial or arbitration date, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery. In the event of Attorney's discharge, or withdrawal with justifiable cause, as provided in Paragraph 13, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney will be entitled to be paid by Client a reasonable fee for the legal services provided. Such fee will be determined by considering the following factors:

- (1) The amount of the fee in proportion to the value of the services performed;
- (2) The relative sophistication of the Attorney and the Client;
- (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (4) The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;
- (5) The amount involved and the results obtained;
- (6) The time limitations imposed by the Client or by the circumstances;
- (7) The nature and length of the professional relationship with the client;
- (8) The experience, reputation, and ability of the Attorney;
- (9) The time and labor required;
- (10) The informed consent of the Client to the fee

6. NEGOTIABILITY OF LEGAL FEES.

Client understands that the rates set forth above are net set by law, but are negotiable between Attorney and Client.

7. COSTS AND LITIGATION EXPENSES/OTHER ATTORNEY'S FEES.

Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney.

Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, interpreter/translator fees, outside photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [____] [PROVIDE RATE] cents per page;

(3) facsimile charges – [_____] [PROVIDE RATE] cents per page; (4) messenger services – at cost; (5) postage at cost; and (6) computerized legal research at cost.

Client understands that, as set forth in Paragraph 7 below, a deposit for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment.

Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

A. Client's Responsibility for Prevailing Party or Court Ordered Fees and Costs to Other Party

Client understands that if Client's case proceeds to court action or arbitration and Client loses or is not the prevailing party, the court may award Attorney fees as well as some or all of the type of costs enumerated in this Paragraph 7 to the winning or prevailing party or parties. Payment of such attorney fees and costs will be the sole responsibility of Client.

B. Allocation of Court Award for Statutory or Contract Fees and Costs

Client agrees that any award of fees and costs that may be awarded pursuant to contract or statute will belong exclusively to Attorney. Client further agrees that, whether or not attorney's fees or costs are awarded by the court in Client's case, if there is a recovery other than an award of fees and costs pursuant to contract or statute Client will remain responsible for the payment, in full, of the attorney's fees and costs in accordance with this Agreement. However, any payment of court-awarded fees and/or costs by a third party will be credited against the amount of fees and/or costs owed by Client under this Agreement. Therefore, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.

C. Responsibility For and Allocation Of Sanctions

Client agrees that any award of fees and costs that may be awarded as discovery or other sanctions shall not be considered part of the Client's recovery and shall belong exclusively to Attorney as additional compensation for extraordinary time and effort.

The court may assess monetary sanctions, (including attorney fees and costs) against Client for bad faith conduct, including of discovery proceedings prior to trial, or inappropriate conduct during or even after the trial. Any such award will be entirely the responsibility of Client.

8. DEPOSIT.

Client agrees to pay Attorney an initial deposit for costs of \$_____ [PROVIDE AMOUNT], to be returned with this signed Agreement. Attorney will hold this initial deposit in a trust account. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and other expenses incurred under this Agreement.

Client agrees that Attorney's right to recover costs and expenses from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed _____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client therefore authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's costs and expenses _____ [PROVIDE NUMBER] calendar days after the date is sent to Client. If Attorney receives a written objection from Client within _____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed costs and/or expenses from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than _____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed costs and/or expenses into the Client Trust Account during the pendency of the dispute.

When Client's deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT].

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and to deposit the costs Attorney estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits required under this Agreement within _____ [PROVIDE NUMBER] days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be promptly refunded to Client.

9. BILLS FOR COSTS AND EXPENSES.

Attorney will send Client periodic bills for costs and expenses incurred. Except as provided in Paragraph 8 ("Deposit"), each bill is to be paid in full within _____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than

30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

10. CLIENT APPROVAL NECESSARY FOR SETTLEMENT.

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

11. LIEN.

Attorney has a lien on any and all claims that are the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums owing to Attorney for any unpaid costs, or attorney's fees, at the conclusion of Attorney's services. The lien will attach to any recovery client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. In the event Attorney withdraws from representing Client without cause, Attorney will not be entitled to any lien for fees. The lien will exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph 7. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

_____ (Client initials here) _____ (Attorney initials here)

12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE.

Attorney is informing Client in writing that Attorney _____ has _____ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

13. NO TAX ADVICE.

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

14. DISCHARGE AND WITHDRAWAL.

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause if permitted under the Rules of Professional Conduct of the State Bar of Georgia and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to

pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, Client will remain obligated to pay Attorney at a reasonable rate for all services provided and to reimburse Attorney for all costs advanced.

Notwithstanding Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event Attorney voluntarily withdraws from representing Client without cause, Attorney waives, and will not be entitled to be paid, any fees by Client but will be entitled to be reimbursed for any costs and expenses already advanced by Attorney.

15. CONCLUSION OF SERVICES.

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or third party, Attorney is authorized to retain copies of the case file. Client papers and property as defined in Rule 1.16(d) of the Georgia Rules of Professional Conduct.

16. RECEIPT OF PROCEEDS.

All proceeds of Client's case will be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

17. DISCLAIMER OF GUARANTEE.

Nothing in this agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

18. ENTIRE AGREEMENT.

This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

19. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

20. MODIFICATION BY SUBSEQUENT AGREEMENT.

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

21. EFFECTIVE DATE.

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

22. Attorney may appoint another attorney to assist with the closure of Attorney's office in the event of Lawyer's death, disability, impairment, or incapacity. In such event, Client agrees that the Successor Attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law practice.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

C

ENGAGEMENT LETTER AND FEE AGREEMENT FOLLOW-UP LETTER TO INITIAL INTERVIEW

RE: *[Subject]*

Dear *[Name]*:

We met to discuss your case on *[date]*, and I have agreed to represent you in connection with *[type of matter]* and we agreed to *[insert appropriate details]*.

Thank you for selecting our law firm to represent you in this matter. At this time I also wish to set forth our agreement regarding payment of our fees. Our fees for legal services are *[amount per hour]*, plus any expenses such as filing fees, deposition charges, copying costs, postage, and related expenses. We will bill you approximately monthly, depending on the amount of work that was done on your file during that period of time. At this point, it is difficult to estimate the amount of time and expense that will be necessary to adequately represent you in this case. However, as we discussed, we estimate the fee will be approximately *[dollar amount]*. We will also advise you before we do any work that will substantially increase the amount of fees.

You have deposited *[dollar amount]* with us for fees and costs. We will hold your funds in our Lawyer's Trust Account. We will provide you with a monthly statement of fees, costs, and expenses. After we mail you the monthly statement, we will apply the funds to fees earned, costs, and expenses incurred. You are also responsible for paying fees, costs, and expenses in excess of the funds that we hold.

My goal is to provide you with excellent legal services. I also want to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. In order to accomplish this, I have arranged with another lawyer to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the Successor Lawyer will contact you and provide you with information about how to proceed.

I will send you pleadings, documents, correspondence, and other information throughout the case. These copies will be your file copies. I will also keep the information in a file in my office. Please bring your file to all of our meetings so that we both have all of the necessary information available to us. When I have completed all the legal work necessary for your case, I will close my file and return the original documents to you. I will then store the file for _____ years. I will destroy the file after that period of time.

I have included a copy of this letter for you to review, sign, and return to me. If any of the information in this letter is not consistent with your understanding of our agreement, please contact me before signing the letter. Otherwise, please sign the enclosed copy and return it to me.

On behalf of the firm, we appreciate the opportunity to represent you in this matter. If you have any questions, please feel free to call.

Very truly yours,

[Lawyer]

[Firm]

I have read this letter and consent to it.

[Client] [Date]

Enclosure

[NOTE: This is a sample form only. Use of this letter will help to establish clear expectations and avoid misunderstandings between you and your client. It will not, however, provide absolute protection against a malpractice action.]

LETTER FROM ABSENT ATTORNEY ADVISING THAT LAWYER IS CLOSING LAW OFFICE

Re: [Name of File, Case or Matter]

Dear [Client Name]:

Please be advised that as of [date], I will be closing my law practice due to *[provide reason, if possible, such as health, disability, retirement, or other reason]*. I will be unable, therefore, to continue to represent you in your legal matter(s). It is your responsibility to immediately retain new counsel of your choice to handle your matter(s). You may select any attorney you wish, or upon request I can provide you with a list of local attorneys who practice in the area of law relevant to your legal needs to the extent that I can. Also, our local bar association [phone number] and the State Bar of Georgia [404-527-8700] provide lawyer referral services that you may choose to utilize.

Failure to select and retain new counsel promptly may be detrimental to you and result in adverse consequences. When you have selected your new attorney, please provide me with written authorization to transfer your file(s) to [him/her]. If you prefer, you may come to my office and retrieve [a copy/copies] of your file(s), and deliver [it/them] to your new attorney. In either case, it is imperative that you obtain a new attorney as soon as possible, and in no event later than [date], so that your legal rights may be preserved. *[Insert appropriate language regarding time limitations or other critical time lines of which the client should be made aware.]*

I *[or: insert name of the attorney who will store files]* will continue to maintain my copy of your closed file(s) for seven years. After that time, I *[or, insert name of other attorney if relevant]* may destroy my *[copy/copies]* unless you notify me immediately in writing that you do not want me to do so. *[If relevant, add: If you object to (insert name of attorney who will be storing files) storing my [copy/copies] of your closed file(s), please let me know immediately and I will accommodate you by making alternative arrangements.]*

If you or your new attorney desire [a copy/copies] of your closed file(s), please promptly contact me to make suitable arrangements.

Within the next [fill in number] weeks, I will provide you with a full accounting of your funds in my trust account, if any, and any fees you currently owe for services rendered.

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

I appreciate the opportunity of having represented you. Please contact me if you have any questions or concerns.

Thank you.
Sincerely,

[Attorney] [Firm]

Succession Planning Materials

Available from the Law Practice Management Resource Library

The materials listed below are provided to help the law firm practitioner who is retiring, closing a law practice or plan and prepare for events that could render them unable to practice law. These materials can help members of the public, as well as relatives, colleagues and staff of attorneys, with the closure of an attorney's practice, if necessary.

Disclaimer: These materials are intended as general educational resources. While they are from reputable sources, they have not been reviewed for compliance with all applicable Georgia Rules of Professional Conduct. Please consult the State Bar's Ethics Hotline at 800-682-9806 if you need additional information.

- **101+ Practical Solutions for the Family Lawyer, Third Edition: Sensible Answers to Common Problems** by Gregg Mark Herman (2009)
- **ABA/AARP Checklist for Family Caregivers** by Sally Balch Hurme (2015)
- **ABA/AARP Checklist for My Family: A Guide to My History, Financial Plans and Financial Wishes** by Sally Balch Hurme (2015)
- **The ABA Checklist for Family Heirs: A Guide to Family History, Financial Plans, and Final Wishes** by Sally Balch Hurme (2015)
- **ABA/AARP Juggling Life, Work, and Caregiving: A Guide to Making It Manageable** by Amy Goyer (2015)
- **The ABA Practical Guide to Estate Planning** by Jay A. Soled (2011)
- **Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events** by Lloyd D. Cohen and Debra Hart Cohen (2008)
- **Don't Let Dementia Steal Everything: Avoid Mistakes, Save Money, and Take Control** by Kerry R. Peck and Rick L. Law (2018)
- **Effective Estate Planning Practice, The: Procedures and Strategies for a Client-Focused Business** by Colleen Cowles (2001)
- **Elder Law and Later-Life Legal Planning** by Lawrence A. Frolik (2017)

- **Employee Benefits Law: The Essential Cases** by Max Drew Siegel & Sharon Reece (2014)
- **Estate and Trust Planning** by Jeffrey N. Pennell and Alan Newman (2005)
- **Estate Planning Forms** by L. Rush Hunt (2009)
- **Estate Planning Strategies: A Lawyer's Guide to Retirement and Lifetime Planning** by Jay A. Soled (2002)
- **HIPAA and HITECH Toolkit: A Business Associate and Covered Entity Guide to Privacy and Security** by HCPro, Inc., Kate Borton (2009)
- **HIPAA Compliance Handbook 2010** by Patricia I. Carter (2010)
- **HIPAA for the General Practitioner** by Melanie D. Bragg (2009)
- **Law & ReOrder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance** by Deborah Epstein Henry (1999)
- **Law Partnership, Second Edition: Its Rights and Responsibilities** by George H. Cain (1999)
- **Law Partnership Revisited** by George H. Cain (2002)
- **The Lawyer's Guide to Buying, Selling, Merging, and Closing a Law Practice** by Sarina A. Butler and Richard G. Paszkiet (2008)
- **A Lawyer's Guide to Estate Planning, Third Edition: Fundamentals for the Legal Practitioner** by L. Rush Hunt and Lara Rae Hunt (2004)
- **A Lawyer's Guide to Estate Planning, Fourth Edition: Fundamentals for the Legal Practitioner** by L. Rush Hunt and Lara Rae Hunt (2018)
- **The Lawyer's Guide to Financial Planning** by Cynthia Sharp (2014)
- **The Lawyer's Guide to Succession Planning: A Project Management Approach for Successful Law Firm Transitions and Exits** by John W. Olmstead (2016)
- **The Lawyer's Retirement Planning Guide** by Susan Berson (2010)

- **Life After Law? What Will You Do With The Next 6,000 Days?** by Edward Poll (2013)
- **Litigating the Nursing Home Case, Second Edition** by James T. O'Reilly and Katherine Van Tassel (2014)
- **Modern Rules of Personal Finance for Professionals** by Susan A. Berson (2008)
- **Passing the Torch Without Getting Burned: A Guide to Law Firm Retirement and Succession Planning** by Peter A. Giuliani (2013)
- **Personal Finance for Professionals** by Susan Berson (2015)
- **Representing the Elderly Client Volumes, I & II: Law and Practice** by Thomas D. Begley, Jr. and Jo-Anne H. Jeffreys (2004)
- **Residence Options for Older and Disabled Clients** by Lawrence A. Frolik (2008)
- **Understanding Elder Law: Issues in Estate Planning, Medicaid and Long-Term Care Benefits** by L. Rush Hunt, Patricia Day, and Michael McCauley (2002)
- **Wills and Estate Administration** by Kenneth Vercammen (2015)
- **Working with Aging Clients: A Guide for Legal, Business, and Finance Professionals by Financial Professionals** by Carolyn L. Rosenblatt (2015)

CHAPTER 4

SUCCESSOR ATTORNEY RESPONSIBILITIES

Information for the Attorney Who Has Been Designated as a Successor, Caretaker or Closer of a Law Practice

The Successor Attorney designated to manage or close another attorney's office will face myriad responsibilities, some of which will require immediate action. Where a detailed plan is in place (as described in the guidelines in Chapter 3 for designating a successor), the job of the Successor Attorney will be easier. If no such plan is in place, the "Checklist for Closing Another Attorney's Office" and the checklists for concerns when assuming responsibilities of another attorney's practice and the sample letters and forms regarding notification to clients and transfer of files will be helpful to you. The "Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Disability, Impairment, Incapacity or Death" and Chapter on Closing Your Own Office also may be useful for the Departing Attorney to review prior to designing his or her own Advance Exit Plan and to ensure that the issues raised in those checklists are dealt with in the plan the attorney develops.

CHECKLIST FOR THE FIDUCIARY OF A SOLE PRACTITIONER

If you have been appointed as the Executor or Administrator of the estate of an attorney who is practicing as a sole practitioner at the time of his or her death, it is important to quickly address many issues that are unique to the deceased practitioner's practice. This is especially true if the death of the solo practitioner was sudden and unexpected.

If a solo practitioner has died, his or her clients for whom services were being performed at the time of death must be advised immediately. In addition, steps must be taken to insure that those clients are properly advised as to the status of their matter and how they may retain substitute counsel. This must be done in a manner that will preserve the attorney-client privilege. The checklist is intended to address those matters that are unique to being the executor of an estate. The estate's legal counsel should be consulted to ensure that your duties are properly carried out during the administration of the estate.

As stated below, all of these issues should be addressed while the attorney is alive and well. Many matters involving an attorney's practice are time sensitive and, if not handled properly in the event of death, the estate may find itself faced with unnecessary liability. Hopefully, this checklist can act as a planning tool as well as a tool to be used in a time of crisis upon an attorney's death.

1. **Retain legal counsel immediately.** Legal counsel should be retained immediately to review the open matters that were being handled by the deceased attorney. If the attorney has designated an attorney to handle the closing of his or her office, that attorney should be contacted immediately. The attorney's will and other estate planning documents including trusts or written instructions should be received.
2. **The Advisory Team.** There will, of course, be many matters that must be handled during the administration of an estate. The items listed above are only a few of the many matters that must be addressed. However, a solo practitioner's practice is unique in that it cannot continue to operate during the administration of an estate without a licensed and qualified attorney in place to take of clients' matters. Because it may not be possible for someone to immediately step in and take over a practice, it is extremely important that a team of qualified advisors be quickly assembled to ensure that the practice and its clients are protected.
3. **Work with staff.** If the attorney had a secretary or assistants working with him or her at the time of death, contact them and determine what emergencies must be attended to and what needs to be done to begin the closing process.
If possible, retain and compensate staff during the closing phase of the practice. In many cases, staff members have a relationship with the clients of the practice and a great deal of knowledge that will be helpful to you as executor and to the advisors for the estate.

4. **Preservation of the practice.** It may be important to the attorney's estate to ensure that the value of the practice is maintained in order to allow the estate to sell the practice to another attorney or law firm. If a Successor Attorney has been designated as described above, he or she may be the intended transferee. Consult with legal counsel for the estate to be certain that the proper steps are being taken to maintain the value of the practice within the estate.
5. **Contact accountant.** Contact the deceased attorney's bookkeeper and accountant immediately to ensure that work in process is properly billed, that receivables are collected and that all financial matters involving the practice are properly taken care of as soon as possible. All trust accounts should be carefully reviewed by estate counsel and the accountant for the firm to ensure that funds are properly handled during the administration of the estate.
6. **Office matters.** Contact the landlord and, if necessary, desirable and appropriate, arrange for the assignment of the lease to the Successor Attorney, the termination of the lease or the subletting of the lease to another party.

Contact all vendors and stop services as soon as possible. Cancel all subscriptions and electronic or online legal research services.

Contact equipment leasing companies (including vehicle leasing companies) as soon as possible. In some cases, vehicle lease agreements will provide for a termination of the lease in the event of death. This should be investigated. If leases cannot be terminated without penalty, subleasing should be considered. Otherwise, it will be necessary to set aside enough funds in order to pay the leasing fees for the duration of the lease terms.

Notify utility companies of the change in the customer. During the administration of the estate, it may be necessary to have the estate as the customer.

Contact all associations with which the attorney had memberships and terminate the memberships. This would include the State Bar of Georgia, American and any local or specialty bar associations. Office staff should be helpful in determining what memberships are in effect.

7. **Plan Ahead.** A practice and its value can quickly disappear without proper administration at the time of death. In addition, there can be significant liability for the estate if the practice is not properly taken care of in such a time of crisis. If a solo practitioner has requested that you act as the executor or trustee for his or her estate, you should address all of these items with the attorney during the estate planning stages. None of these matters should be left until the time of death to address.

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

This is a checklist for an attorney who is closing another attorney's practice. The reason that the attorney is closing his or her practice will affect how you proceed. For example, if the attorney is disabled or deceased, you may need to make decisions without the attorney's assistance. To the extent that the attorney and his or her staff are available, you should make every effort to seek their assistance. If you are closing an attorney's practice and selling it to another attorney, please refer to *Selling a Law Practice Guide*.

Costs involved in closing for another attorney's practice can be significant. Be prepared and be careful about who is responsible for these expenses.

The term "Absent Attorney" refers to the attorney whose office is being closed and whose practice is being terminated. "Successor Attorney" refers to the attorney who is closing the Absent Attorney's practice.

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, etc. If possible, discuss with the Absent Attorney the status of open files. If the attorney has died or is otherwise unavailable, contact the secretary, paralegal or other assistants who worked with the Absent Attorney. Staff members often have relationships with the clients and a great deal of helpful information. If possible, retain and compensate the staff while you are closing the Absent Attorney's practice.

On active litigation cases, expect a full and active litigation calendar awaiting compliance. Immediately review upcoming trial dates and note of issue filing deadlines, scheduled court dates, appearances, depositions, motion return dates and filing dates for briefs, pleadings and discovery responses. Obtain a run of the calendar for the next six months. 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 governed by a judicial preliminary conference order which directs that each phase of a case occur by a certain date. Check the preliminary conference order in every case. If extensions are needed on the preliminary conference scheduling order, seek extensions in writing well before close of the discovery period. Determine what can be continued and what needs to be dealt with. Courts and opposing counsel are generally cooperative about continuing matters when disability strikes, but need as much advance notice as possible.

2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission to postpone or reschedule. (If making these arrangements constitutes a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs. Talk to clients about retaining new counsel to take over responsibility for their matters).

3. Contact courts and opposing counsel for files that require discovery or court appearances immediately. Reschedule hearings or obtain extensions where necessary. Confirm continuances 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 procedures manual. Determine if there is a way to get a list of clients with active files. Contact clients with active files and explain that the Absent Attorney's law office is being closed and that you are handling the closing. Confirm this in writing. (See *Letter from Successor Attorney Advising That Lawyer is Closing Law Office*.) Advise the clients to promptly retain new counsel and make arrangements to have their files returned to them or transferred to new counsel. Provide clients with a date by which they should pick up their files or send instructions to deliver the file to another attorney and describe the consequences of their failure to do so.

You may recommend successor counsel to the client, including yourself. Transfers of files and changes of counsel often raise issues of fees owed to the Absent Attorney and must be dealt with at the time of transfer. For example, if a matter was being handled on a contingency fee basis, attempt to negotiate the Absent Attorney's share of such fee with the attorney who is taking over the representation, before the file is transferred or the new attorney substituted as counsel. Similarly, if a matter was being handled on an hourly basis and there are outstanding fees owed to the Absent Attorney, payment should be obtained or secured, if possible, before the file is delivered to the client or transferred to new counsel. If satisfactory arrangements or agreement is not possible, you may need to file an application with a court. Charging and retaining liens may be asserted in appropriate cases, with some limitations.

6. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Absent Attorney as attorney of record. Review Rule 4.3 of the Uniform Superior Court Rules of Georgia. If there is no Substitution of Counsel, you may have to make a motion to have the Absent Attorney relieved of representation of the client.
7. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
8. Pick an appropriate date and check to see if all cases have either a motion and order allowing withdrawal of the Absent Attorney or a Substitution of Attorney filed with the court.
9. Make copies of files for clients. Retain the Absent Attorney's original file. 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 there are original documents in it that the client needs (such as a title to property), return the original documents to the client and keep copies for the Absent Attorney's file.

Original wills and other original documents must be returned to clients and may not be destroyed or otherwise disposed of. In the case of original wills, if you are unable to locate the clients after a diligent search, you may file such wills with the Probate Court (be aware of filing fees) or deposit them with an appropriate depository (e.g., the appropriate county bar association) and notify the clients in writing, addressed to their last known address. Do NOT destroy them. (See chapter on *File Retention*.)

When returning files, make sure that you are returning them to the proper client. If a husband and wife executed wills years ago and the wife responds to your client inquiry letter by asking for the file, do not send back the husband's will without his written authorization. The same rule applies to corporations, shareholders, business partners, etc. Seek court or ethics committee guidance where appropriate.

10. To locate clients for whom there are no current addresses, contact the postal service and other sources of information. If necessary, consider publication to advertise that the firm has closed. Be careful not to disclose confidential client information, including the existence of the attorney/client relationship, to third parties.
11. All clients should be advised on where their closed files will be stored, and who they should contact in order to retrieve a closed file.
12. Send the name, address, and phone number of the person who will be retaining the closed files to the State Bar of Georgia, Office of General Counsel, 104 Marietta Street, N.W., Suite 100, Atlanta, GA 30303.
13. If the attorney whose practice is being closed was a sole practitioner (the Absent Attorney), try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Absent Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
14. Contact the Absent Attorney's malpractice insurance carrier, if applicable, about extended reporting coverage. Make arrangements through the Absent Attorney or his or her fiduciary to obtain reporting endorsement coverage on professional liability insurance for continuing professional liability coverage. Review other business insurance policies and determine which may be canceled and whether there is coverage in the event of the Absent Attorney's disability or death.
15. Notify the Absent Attorney's accountant of your involvement in closing the Affected Attorney's practice and seek assistance in reviewing financial records, including IOLTA and escrow accounts. If the Absent Attorney acted as his or her own accountant and tax preparer, the Successor Attorney should retain an accountant to determine the financial status and tax liabilities of the Absent Attorney. The Successor Attorney should decide how financial accounting will be carried out during the period in which the Absent Attorney's practice is being closed.

16. *(optional)* If you have authorization to handle the Absent Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine if 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 either be 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 Absent Attorney's accounts, you will probably need to be an authorized signer on the accounts or you will need a written agreement or a limited power of attorney. If this has not been done and is not obtainable from the Absent Attorney due to death, disability, impairment, or incapacity, you may have to request the State Bar of Georgia to petition the court to take jurisdiction over the practice and the accounts. If the Absent Attorney is deceased, another alternative is to petition the court to appoint a personal representative under the probate statutes.) Review applicable retainer agreements and engagement letters. If there are fee disputes with clients, you may have to negotiate and settle outstanding fees owed to the Absent Attorney. Notify the Absent Attorney's accountant to obtain a full understanding of the Absent Attorney's accounting procedures. Money from clients for services rendered by the Absent Attorney should go to the Absent Attorney or his/her estate.
17. *(optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletters, The Georgia Bar Journal, and other appropriate places.
18. *(optional)* If your arrangement with the Absent Attorney or estate is that you are to be paid for closing the practice, submit your bill, as defined in the Georgia Rule of Professional Conduct 4-228. Receiverships.
19. *(optional)* If your arrangement is to represent the Absent Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.
20. *(optional)* If authorized, pay business expenses and liquidate or sell the practice. If the Absent Attorney has died, work with his or her fiduciary to resolve these matters.
21. *(optional)* Begin terminating all vendor and other contractual obligations of Absent Attorney, including lease obligations.

**LETTER FROM CLOSING OR SUCCESSOR ATTORNEY ADVISING
THAT LAWYER IS UNABLE TO CONTINUE LAW PRACTICE**

Re: [Name of File, Case or Matter]

Dear [Client Name]:

Due to _____ (provide reason for inability to practice, such as health, disability, retirement, death, discipline, or other), [Absent Attorney] is no longer able to continue the practice of law. You will need, therefore, to retain the services of another attorney to represent you in your legal matter(s), and I encourage you to do so immediately to protect your legal interests and avoid adverse consequences or action against you. I will assist [Absent Attorney] in closing [his/her] practice.

You will need [a copy/copies] of your file(s). Accordingly, enclosed please find a proposed written authorization for your file(s) to be released directly to your new attorney. When you or your new attorney returns this signed authorization, I (we) will release your file(s) as instructed. If you prefer, you may come to [address of office or location for file pick-up] and retrieve [it/them] so that you may deliver [it/them] to your new attorney. In either case, it is imperative that you act promptly, and in no event later than [provide date] so that your legal rights may be preserved.

Your closed file(s), if any, will be stored at [location]. If you need a closed file, you may contact me at the following address and phone number until [date]:
[Name] [Address] [Phone]

After that time, you may contact [Attorney in charge of closed files] for your closed file(s) at the following address and phone number:
[Name] [Address] [Phone]

You will shortly receive a final accounting from [Absent Attorney], which will include any legal fees you currently owe [him/her], and an accounting of any funds in your client trust account.

On behalf of [Absent Attorney], I would like to thank you for affording [him/her] the opportunity to provide you with legal services. If you have any additional concerns or questions, please contact me at the address and phone number indicated in this letter.

Thank you.

Sincerely,
[Successor Attorney] [Firm]

LETTER FROM FIRM OFFERING TO CONTINUE REPRESENTATION

Re: [Name of File, Case or Matter]

Dear [Client Name]:

Due to _____ (provide reason for inability to practice, such as, ill health, disability, retirement, suspension, death, other) [Absent Attorney] is no longer able to continue representing you in your legal matter(s).

A member of this firm, [name], is available to continue handling your matter(s) if you wish. You have the right, however, to select any attorney of your choice to represent you. If you wish this firm to continue handling your matter(s), please sign the authorization at the end of this letter and return it to us.

If you wish to retain another attorney, however, please provide us with written authority to release your file(s) directly to [him/her]. If you prefer, you may come to our office and pick up [a copy/copies] of your file(s) and deliver [it/them] to your new attorney. 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 a written authorization for us either to represent you or to transfer your file(s) to your new counsel by [date].

We wish to make this transition as easy as possible for you. Please feel free to contact me with any questions you may have.

Thank you.

Sincerely,

[*Successor Attorney*]

Enclosures

I want a member of the firm of [insert law firm's name] to handle my matter(s) in place of [insert Absent Attorney's name]

[Client] [Date]

CHAPTER 5

FREQUENTLY ASKED QUESTIONS

WHAT IF?

ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT CLOSING A LAW PRACTICE ON A TEMPORARY OR PERMANENT BASIS

If you are planning to close your office or if you are considering helping a friend or colleague close his or her practice, there are numerous issues to resolve. How you structure your agreement will determine what the Successor Attorney must do if the Successor Attorney finds (1) errors in the files, such as missed time limitations; (2) errors in the Absent Attorney's trust account; or (3) defalcations of client funds.

Discussing these issues at the beginning of the relationship with your friend or colleague will help to avoid misunderstandings later when the Successor Attorney interacts with the Absent Attorney's former clients. If these issues are not discussed, the Absent Attorney and the Successor Attorney may be surprised to find that the Successor Attorney (1) has an obligation to inform the Absent Attorney's clients about a potential malpractice claim or (2) that the Successor Attorney may be required to report the Absent Attorney to the Disciplinary Committee (GRPC 8.3). (Reporting Professional Misconduct)

The best way to avoid these problems is for the Absent Attorney and the Successor Attorney to have a written agreement, and, when applicable, for the Successor Attorney to have a written agreement with the Absent Attorney's former clients. If there is no written agreement clarifying the obligations and relationships or plainly limiting the scope of the Successor Attorney's role, a Successor Attorney may find that the Absent Attorney believes that the Successor Attorney is representing the Absent Attorney's interests. At the same time, the former clients of the Absent Attorney may also believe that the Successor Attorney is representing their interests. It is important to keep in mind that an attorney-client relationship can sometimes be established by the reasonable belief of a would-be client. (GRPC 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 1.9 (Conflict of Interest: Former Client)).

This section reviews some of these issues and the various arrangements that the Absent Attorney and the Successor Attorney can make. All of these frequently asked questions, except #9, are presented as if the Successor Attorney is posing the questions.

1. Must I notify the former clients of the Absent Attorney if I discover a potential malpractice claim against the Planning Attorney?

The answer is largely determined by the agreement that you have with the Absent Attorney and the Absent Attorney's former clients. If you do not have an attorney-client relationship with the Absent Attorney, and you are the new lawyer for the Absent Attorney's former clients, you must inform your client (the Absent Attorney's former client) of the error, and advise the client of the option of submitting a claim to the professional malpractice insurance carrier of the Absent Attorney, unless the scope of your representation of the client

excludes actions against the Absent 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 Absent Attorney's lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Absent Attorney and advise the Absent Attorney of the obligation to inform the client of the error. (GRPC 1.4(a) (Communication)). If you are the attorney for the Absent Attorney, you would not be obligated to inform the Absent Attorney's client of the error. You would, however, want to be careful not to make any misrepresentations. (GRPC 4.1 (Truthfulness in Statements to Others), 8.4(c) (Misconduct)). For example, if the Absent Attorney had previously told the client a complaint had been filed, and the complaint had not been filed, you should not reaffirm the misrepresentation and you might well have a duty to correct it under some circumstances. In any case, you or the Absent Attorney should notify the Absent Attorney's malpractice insurance carrier as soon as you become aware of any circumstance, error or omission that may be a potential malpractice claim in order to prevent denial of coverage under the policy due to the "late notice" provision.

If you are the Absent Attorney's lawyer, an alternative arrangement that you can make with the Planning Attorney is to agree that you may inform the Absent Attorney's former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Absent Attorney. It would authorize you to inform the Absent Attorney's former clients that a potential error exists and that they should seek independent counsel.

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

Again, the answer is based on your relationship with the Absent Attorney and the Absent Attorney's clients. If you are the Absent Attorney's lawyer, you would be limited to disclosing any information that the Absent Attorney wished you to disclose. You would, however, want to make clear to the Absent Attorney's clients that you do not represent them and that they should seek independent counsel, as well as that you are not able or permitted to answer all of their questions. If the Absent 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 Absent Attorney is no longer practicing law, does the Absent Attorney have malpractice coverage?

This depends on the type of coverage the Absent Attorney had. Lawyer professional liability policies are "claims made" policies. As a result, as a general rule, if the policy period has terminated, there is no coverage. However, most malpractice policies include a short automatic extended reporting period of usually 60 days after the termination date of the policy.

This provides the opportunity to report known or potential malpractice claims when a policy ends and will not be renewed. In addition, most malpractice policies provide options to

purchase an extended reporting period endorsement for longer periods of time. These extended reporting period endorsements do not provide ongoing coverage for new errors, but they do provide the opportunity to lock in coverage under the expiring policy for errors that surface after the end of the policy, but within the extended reporting endorsement time frame. For frequently asked questions on extended reporting period coverage visit https://www.americanbar.org/groups/lawyers_professional_liability/resources/extended_reporting_coverage/.

4. What protection will I have under the Absent Attorney's malpractice insurance coverage if I participate in the closing or sale of the office?

You must check the definition of "Insured" in the malpractice policy form. Most policies define "Insured" as both the firm and the individual lawyers employed by or affiliated with the firm. This typically is broadened to include past employees and "of counsel" attorneys. In addition, most lawyers' professional liability policies specifically provide coverage for the "estate, heirs, executors, trustees in bankruptcy and legal representatives" of the Insured, as additional insureds under the policy.

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

Whether you are permitted to represent the former clients of the Absent Attorney depends on (1) if the clients want you to represent them and (2) whom else you represent.

If you are representing the Absent Attorney, you are unable to represent the Absent Attorney's former clients on any matter against the Absent Attorney. This would include representing the Absent Attorney's former client on a malpractice claim, ethics complaint, or fee claim against the Absent Attorney. If you do not represent the Absent Attorney, you are limited by conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undergoing representation or reviewing confidential information of a former client of the Absent Attorney. (GRPC 1.7 (Conflict of Interest General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 1.9 (Conflict of Interest: Former Client)).

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case. 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. If you intend to participate in a referral fee, the requirements of GRPC Rule 5.4 (Professional Independence of a Lawyer) must be met. In addition, if the Absent 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 didn't 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 State Bar of Georgia's Lawyer Referral Service (telephone number 404-527-8700) or other appropriate lawyer referral service.

6. What procedures should I follow for distributing the funds that are in the Absent Attorney's escrow account?

If your review of the Absent Attorney's escrow account indicates that there may be conflicting claims to the funds in the account, you should initiate a procedure for distributing the existing funds, such as a court directed interpleader.

7. If there was a serious ethical violation, must I tell the Absent Attorney's former clients?

The answer depends on the relationships. The answer is (A) no, if you are the Absent Attorney's lawyer; (B) maybe, if you are not representing the Absent Attorney or the Absent Attorney's former clients; and (C) maybe, if you are the attorney for the Absent Attorney's former clients.

- (A) If you are the Planning Attorney's lawyer, you are not obligated to inform the Absent Attorney's former clients of any ethical violations or report any of the Absent Attorney's ethical violations to the disciplinary committee if your knowledge of misconduct is a confidence or secret of your client, the Absent Attorney. (GRPC 8.3 (Reporting Professional Conduct), GRPC 1.6 (Confidentiality of Information)). 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 Absent Attorney's escrow account as they should be, you, as the attorney for the Absent Attorney, should discuss this matter with the Absent Attorney, and encourage the Absent Attorney to correct the shortfall.

If you are the attorney for the Absent Attorney, and the Absent Attorney is deceased, you should contact the personal representative of the estate. Remember that your confidentiality obligations continue even though your client is deceased. If the Absent Attorney is alive but unable to function, you may notify the Absent Attorney's clients of the Absent Attorney's situation and suggest that they seek independent legal advice.

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

- (B) If you are not the attorney for the Absent Attorney, and you are not representing any of the former clients of the Absent Attorney, you may still have a fiduciary obligation (as an authorized signer on the escrow account) to notify the clients of the shortfall, and you may have an obligation under GRPC 8.3 (Reporting Professional Misconduct) to report the Absent Attorney to the Disciplinary Committee. You should also report any notice of a potential claim to the Absent Attorney's malpractice insurance carrier in order to preserve coverage under the Absent Attorney's malpractice insurance policy.

If you are the attorney for a former client of the Absent Attorney, you have an obligation to inform the client about the shortfall and advise the client of available remedies such as pursuing the Absent Attorney for the shortfall and filing claims or complaints with the Georgia Bar Foundation, 104 Marietta Street, NW, Suite 610 Atlanta, GA 30303 (404-588-2240); the malpractice insurance carrier; and the Disciplinary or Grievance

Committee. If you are a friend of the Absent Attorney, this is a particularly important issue. You should determine ahead of time whether you are prepared to assume the obligation to inform the Absent Attorney's former clients of the Absent Attorney's ethical violations. If you do not want to inform your clients about possible ethics violations, you must explain to your clients (the former clients of Absent Attorney) that you are not providing the clients with any advice about ethics violations of the Absent Attorney. You should advise the clients in writing to seek independent representation on these issues.

As a general rule, whether you have an obligation to disclose a mistake to a client will depend on the nature of the Absent Attorney's possible error or omission, whether it is possible to correct it in the pending proceeding, the extent of the harm from the possible error or omission, and the likelihood that the Absent Attorney's conduct would be deemed so deficient as to give rise to a malpractice claim. Ordinarily, since lawyers have an obligation to keep their clients informed and to provide information that their clients need to make decisions relating to the representation, you would have an obligation to disclose to the client the possibility that the Absent Attorney has made a significant error or omission.

8. If the Absent 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 in some way you aided or abetted the Absent Attorney in the unethical conduct. Whether you have an obligation to inform the Absent Attorney's former clients of the defalcation depends on your relationship with the Absent Attorney and with the Absent Attorney's former clients. (See #7 above.)

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

9. What are the pros and cons of allowing someone to have access to my escrow account? How do I make arrangements to give my Successor Attorney access?

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you suddenly become unavailable or unable to continue your practice, a Successor Attorney is able to transfer money from your trust account to pay appropriate fees, disbursements and costs, to provide your clients with settlement checks, and to 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 guardianship proceeding, or an order for a court-directed interpleader. This delay may leave your clients at a disadvantage, since settlement funds, or unearned fees held in trust, may be needed by them to hire a new lawyer.

On the other hand, the most important “con” of authorizing access is your inability to control the person who has been granted access. Since serving as an authorized signer gives the Successor Attorney the ability to write trust account checks, withdraw funds, or close the account, he or she can do so at any time, even if you are not disabled, incapacitated, or for some other reason unable to conduct your business affairs, or dead. 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 allow your Successor Attorney to be an authorized signer, you must decide if you want to give the Successor Attorney (1) access only during a specific time period or when a specific event occurs (e.g., incapacity) or (2) access all the time.

10. The Absent Attorney wants to authorize me as an escrow account signer. Am I permitted also to be the attorney for the Absent Attorney?

Not if there is a conflict of interest. As an authorized signer on the Absent Attorney’s escrow account, you would have a duty to properly account for the funds belonging to the former clients of the Absent Attorney. This duty could conflict with your duty to the Absent 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 defalcations in the escrow account. Because of this potential conflict, it is probably best to choose to be an authorized signer OR to represent the Absent Attorney on issues related to the closure of his or her practice, but not both. (See #4 above.)

APPENDICES

APPENDIX A

ETHIC RULES RELEVANT TO CLOSING A LAW PRACTICE

RULE 1.16 (d) DECLINING OR TERMINATING REPRESENTATION . . . a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

RULE 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

- (a) Reserved.
- (b) The practice is sold as an entirety to another lawyer or law firm;
- (c) Actual written notice is given to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the terms of any proposed change in the fee agreement authorized by paragraph (d);
 - (3) the client's right to retain other counsel or to take possession of the file; and
 - (4) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

- (d) *The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.*

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] The practice of a law profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when another lawyer or firm takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4: Professional Independence of a Lawyer and 5.6: Restrictions on Right to Practice.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation. Neither does a return to private practice as a result of an unanticipated change in circumstances result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office.

[3] Reserved.

[4] Reserved.

Single Purchaser

[5] The Rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by Rule 1.7: Conflict of Interest or another rule to represent the client, the requirement that there be a single purchaser is nevertheless satisfied.

Client Confidences, Consent and Notice

[6] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6: Confidentiality of Information than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed

by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[7] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

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

Fee Arrangements Between Client and Purchaser

[9] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser, unless the client consents. The purchaser may, however, advise the client that the purchaser will not undertake the representation unless the client consents to pay the higher fees the purchaser usually charges. To prevent client financing of the sale, the higher fee the purchaser may charge must not exceed the fees charged by the purchaser for substantially similar services rendered prior to the initiation of the purchase negotiations.

[10] The purchaser may not intentionally fragment the practice which is the subject of the sale by charging significantly different fees in substantially similar matters. Doing so would make it possible for the purchaser to avoid the obligation to take over the entire practice by charging arbitrarily higher fees for less lucrative matters, thereby increasing the likelihood that those clients would not consent to the new representation.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1: Competence); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to

(see Rule 1.7: Conflict of Interest); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16: Declining or Terminating Representation).

Applicability of the Rule

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

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

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

APPENDIX B

LETTER ADVISING THAT LAWYER IS CLOSING HIS/HER LAW OFFICE (Sample – Modify as appropriate)

Re: [Name of File, Case or Matter]

Dear [Client Name]:

As of [date], I will be closing my law practice due to [provide reason for inability to practice, such as health, disability, retirement, death, discipline, or other]. I will be unable to continue representing you on your legal matters. You will need, therefore, to retain the services of another attorney to represent you in your legal matter(s), and I encourage you to do so immediately to protect your legal interests and avoid adverse consequences or action against you.

You can select any lawyer you wish, or I would be happy to provide you with a list of local lawyers who practice in the area of law relevant to your legal needs. Also, the State Bar of Georgia (404-527-8700) will direct you to your local bar that provides a lawyer referral service.

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

You will need [a copy/copies] of your file(s). Accordingly, enclosed please find a proposed written authorization for your file(s) to be released directly to your new attorney. When you or your new attorney returns this signed authorization, I will release your file(s) as instructed. If you prefer, you may come to [address of office or location for file pick-up] and retrieve [it/them] so that you may deliver [it/them] to your new attorney. In either case, it is imperative that you act promptly, and in no event later than [provide date] so that your legal rights may be preserved.

Your closed file(s), if any, will be stored at [location]. If you need a closed file, you may contact me at the following address and phone number until [date]:

[Name] [Address] [Phone]

After that time, you may contact [Attorney in charge of closed files] for your closed file(s) at the following address and phone number:

[Name] [Address] [Phone]

Within the next [fill in number] weeks I will be providing you with a final accounting of any fees you currently owe and an accounting of any funds in your client trust account.

I would like to thank you for affording me the opportunity to provide you with legal services. If you have any additional concerns or questions, please contact me at the address and phone number indicated in this letter.

Thank you.

Sincerely,

[Lawyer] [Firm]

APPENDIX C

NOTICE THAT FILE SHOULD NOT BE CLOSED

TO: Records Department

FROM: Attorney _____
(or, alternatively, Bookkeeping Department)

RE: [Matter]

DO NOT MARK THIS FILE CLOSED OR RETURN OR DESTROY ANY
MATERIAL IN THIS FILE AS THERE IS A BILLING PROBLEM.

**SAMPLE CLIENT CONTACT LETTER: AUTHORIZATION TO
RETURN/DESTROY FILES**

Dear [Client Name]:

Under the firm's document retention policy, we normally destroy files [X] years after a matter is closed, unless other arrangements are requested by, and arranged with, you. Our records indicate that the files for the matters previously handled for you and closed on [month, day, year] are now subject to destruction unless you wish to make other arrangements.

You are entitled, upon written request, to any files in the firm's possession relating to legal services performed by us for you, excluding any documents not reasonably necessary to your representation. Please contact me if you wish to inspect any files before making the decision whether to have them transferred to you or destroyed. Our off-site storage facility will charge for removing files from storage for inspection at the rate of [\$X] per box, which you would be expected to pay.

If you elect to inspect boxes and/or to have these boxes transferred to you, you acknowledge your obligation to pay the costs of removal from storage and transportation by signing a copy of this letter.

Sincerely,

[Name of Firm]

By: [Name of Lawyer]

[Name of Client]

Date: _____

APPENDIX E

NOTICE REGARDING FILE DESTRUCTION

[Date]

As you know from your retainer agreement, we hold all the file information pertaining to your matter for a period of _____ following the conclusion of the matter.

At the expiration of that period, all material in the file will be destroyed according to firm policy. If you would like a copy of any or all of the material in the case file before it is destroyed, please contact our office before the expiration date for your file to make arrangements. You will be charged a nominal fee for copying costs.

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

[Client]

[Date]

REQUEST FOR FILE

I hereby request that [Firm/Attorney’s Name] provide me with [a copy/copies] of my file(s).
Please send the file(s) to the following address:

[Client]

[Date]

ACKNOWLEDGEMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received [a copy/copies] of my file(s) from the law office of [name].

[Client]

[Date]

[CAPTION]

MOTION TO WITHDRAW AS COUNSEL

Comes now _____, attorney of record for _____ in this matter, and respectfully requests leave to withdraw under the provisions of Rule 4.3 of the Uniform Superior Court Rules of Georgia.

The undersigned has given (his) (her) client due written notice of this intention to withdraw prior to submitting this request to the Court, as shown by the attached notification certificate.

In accordance therewith, the undersigned certifies (Plaintiffs) (Defendants) _____ are further informed under the above Rule.

- a. The _____ Court retains jurisdiction of this matter;
- b. (Plaintiffs) (Defendants) have the burden of keeping the Court informed of their current address for the service of notices, pleadings, or other papers;
- c. (Plaintiffs) (Defendants) have the obligation to prepare to go forward with their case or to hire other counsel to handle their case;
- d. If (Plaintiffs) (Defendants) fail or refuse to meet these obligations, they may suffer adverse consequences including the entry of judgment against them.
- e. (Plaintiffs) (Defendants) must file any objections to this Motion to Withdraw with this Court no later than ten days from the date of filing of this motion, _____.

Wherefore, the undersigned _____ respectfully requests that an Order be entered permitting (him) (her) to withdraw as attorney of record for _____.

This _____ day of _____, 20__.

(Name of Attorney)
Georgia Bar No. _____
Attorney for (Defendants) (Plaintiffs)
(Address)

NOTICE OF SUBSTITUTE COUNSEL

Be it known that _____,
Attorney-at-Law, hereby withdraws as Of Counsel in the attached listed
Cases and/or proceedings, and _____,
Attorney-at-Law, hereby enters her appearance as substitute Of Counsel in
The attached listed cases and/or proceedings.

Date: _____

BY WITHDRAWING OF COUNSEL:

Signature

Printed Name

Address: _____

Telephone: _____

Georgia Bar No. _____

Date: _____

BY SUBSTITUTE OF COUNSEL:

Signature

Printed Name

Address: _____

Telephone: _____

Georgia Bar No. _____

[CAPTION]

NOTIFICATION CERTIFICATE

The undersigned _____ hereby certifies as follows:

1. The undersigned intends to withdraw as attorney of record for _____.
2. The undersigned has complied with notification requirements of Rule 4.3 of the Uniform Superior Court Rules of Georgia by U.S. Mail to the client's last known address:

(Name and address of client)

The last known telephone number of the client is _____.

SO CERTIFIED this _____ day of _____, 20_____.

(Name of Attorney)

Attorney for (Defendant) (Plaintiff)

Georgia Bar No. _____

(Address)

[CAPTION]

ORDER PERMITTING WITHDRAWAL OF ATTORNEY

Counsel for the (Plaintiffs) (Defendants) having submitted its Motion to Withdraw as attorney of record for_____, and it appearing that all requirements of Rule 4.3 of the Uniform Superior Court Rules of Georgia have been satisfied, the Motion is hereby granted.

So ORDERED _____ this day of _____, 20_____.

Judge, _____ Court of Judge, _____ Court of County, Georgia.

Prepared by:

(Name of Attorney)

Georgia Bar No. _____
(Address)

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Faye First, *Conference Center Manager*
404-419-0155 | fayef@gabar.org

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866-773-2782

Sheila Baldwin, *Member Benefits Coordinator*
404-526-8618 | sheilab@gabar.org

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Resources are provided as a member service of the State Bar of Georgia. This list is provided as a service to lawyers seeking employment. The list is not intended to be inclusive or an endorsement of any organization. Members are advised to use their own due diligence prior to using the services of these or any other organizations.

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www.gabar.org

Natalie Kelly, *Director*
404-527-8770 | nataliek@gabar.org

Sheila Baldwin, *Member Benefits Coordinator*
404-526-8618 | sheilab@gabar.org

Kim Henry, *Resource Advisor*
404-526-8621 | kimh@gabar.org

Latashia Hughes, *Administrative Assistant*
404-527-8772 | latashiah@gabar.org

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The Lawyer Assistance Program (LAP) is a confidential service provided by the State Bar to help its members with life's difficulties. In order to help meet the needs of its members and ensure confidentiality, the Bar contracts the services of CorpCare Associates, Inc., Employee Assistance Program, a Georgia-headquartered national counseling agency.

www.gabar.org/LAP

LAWYERS HELPING LAWYERS

Georgia Lawyers Helping Lawyers (LHL) is a confidential peer-to-peer program that will provide colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.

www.georgiaLHL.org

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Suite 100
Atlanta, GA 30303
404-527-8700
800-334-6865

Coastal Georgia
18 E. Bay St.
Savannah, GA 31401
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877-239-9910

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Kindall Harville, *Coastal Georgia Office Administrator*

912-239-9910 | kindallh@gabar.org

Layne Bridges, *South Georgia Office Administrator*

229-387-0446 | layneb@gabar.org

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404-527-8777 | membership@gabar.org

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Kim Henry, *Resource Advisor*

404-526-8621 | kimh@gabar.org

Latashia Hughes, *Administrative Assistant*

404-527-8772 | latashiah@gabar.org

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Shopping for Health Insurance is easy! No need to jump between multiple websites to compare plans. Through the private insurance exchange, members now have an easy way to evaluate available plans from leading insurance providers!

Decision Support - Our "Best Fit" interactive decision support tool helps you make a more informed and personalized decision across a range of health plans. "Best Fit" guides you through the buying process by asking a few simple questions and then suggesting the plan that best fits your individual needs. For a more personalized approach, Live Chat or call a licensed Benefits Counselor.

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How It Works

1. Register by entering some basic information.



2. Review quotes from leading providers side-by-side.



3. Need help? Use decision support or call to speak to a licensed Benefits Counselor.



4. Shop for other products.



5. Review your selection and apply.



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Your Benefits Counselor will provide you:

- An analysis of the costs and benefits of the exchange health plans vs. your current plan.
- A live demonstration of the Private Exchange portal.
- A proposal that includes all costs and benefits included with the private exchange.

HOW IT WORKS

1. Employer creates a Private Exchange Account.



2. Employer chooses the benefits to make available.



3. Employer sets up a defined-contribution strategy & amount.



4. Employees shop for benefits that meet their individual needs.



WHY GO THROUGH THE PRIVATE INSURANCE EXCHANGE FOR STATE BAR OF GEORGIA?



COMPLIANCE

Our health reform and ACA Compliance Solutions help you with managing risk, employee notifications, employer reporting, and regulatory plan changes.



REDUCED ADMIN

Enrollment is paperless. Changes and billing admin are through your Online HR Admin Portal – available through your private exchange.



MORE CHOICES

100's of different health plans from leading carriers are available. Multiple group and individual plan options are also available to compare on the exchange.



ANCILLARY BENEFITS

Already plugged into your private exchange is a voluntary ancillary benefits platform similar to what a Fortune 500 company might offer to their employees.

INDUSTRY-LEADING TECHNOLOGY



Enhance your employees' shopping experience with a customized Private Exchange. This fully integrated HR Portal includes your logo, branding, and even feeds from your social media profiles. You can also post messages upon entering the exchange and send alerts directly to employee email accounts. Employees will also have tools available to help them find the best plan to suit their individual needs. Other support features include a filtering tool, plan comparison, provider search tools, and live chat.

LAWYERS' PROFESSIONAL LIABILITY SOLUTIONS



Even great lawyers sometimes face malpractice claims. That's why we have a solution tailored to your firm. Receive practical, relevant advice and relevant risk management information that helps support you in the management, mitigation, and avoidance of legal malpractice.



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Innovative, Tailor-Made Solutions

No matter what size your firm is, we have a solution for you. With a variety of providers, we will find the best policy to fit your practice's unique needs.



Experienced Staff

Count on a staff of professionals that are used to serving legal professionals just like you.



Risk Management Expertise and Resources

Help avoid claims all together with a variety of risk-management resources. Policy holders will be given access to articles, hot lines, experts and more.

Lawyers' Professional Liability Policy Highlights

- Broad definition of professional services including arbitrator, mediator, notary, title agent, escrow agent, or fiduciary
- Broad definition of insured including past or present attorneys, of counsels, employees, and independent contractors
- Named insured has the right to consent to settlement
- Outside interests in clients– coverage for legal services rendered if less than 10 percent equity in the client
- Prior acts coverage, including predecessor firm coverage full prior acts coverage available
- Prior law firm coverage included– individual prior acts tailored as requested
- Author, publisher, or presenter of legal research papers or materials coverage
- Innocent insured protection



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Law Practice Management Program

The Law Practice Management Program (LPM) is a member service assisting all Georgia lawyers and their staff with pulling together the pieces of the office management puzzle. Get advice on technology, personnel issues, compensation, workflow, file organization, and tickler systems. Browse on-line forms and articles collections, check out books, CDs, DVDs or videotapes from our Resource Library, or schedule on-site management consultations and training sessions.

Members may purchase books and CDs and other materials directly from the American Bar Association at a 15% discount.

To learn more go to www.gabar.org select; Attorney Resources/ practice management, or contact Law Practice Management at 404-527-8772.

Law Practice Management Staff

Law Practice Management Program staff is available from 8:30 a.m. to 5 p.m., Monday through Friday. We look forward to being of service to you.

Natalie R. Kelly
Director
404-527-8770 or 800-334-6865, Ext. 8770
NatalieK@gabar.org

Contact Natalie for questions about LPM or to discuss advanced practice management issues including marketing, compensation plans, partnership setup, etc., and office automation and legal technology questions.

Kimberly Henry
Resource Advisor
404-526-8621 or 800-334-6865, Ext. 8621
KimH@gabar.org

Call Kim for general practice management issues including marketing, compensation plans, entity setup, etc., or to request materials from the LPM Resource Library.

Sheila Baldwin
Member Benefits Coordinator
404-526-8618 or 800-334-6865, Ext. 8618
SheilaB@gabar.org

Sheila is here to help you with all things Fastcase, health insurance and other member benefits. Please give her a call if you have questions or need assistance with member benefits.

Latashia Hughes
Administrative Assistant
404-527-8772 or 800-334-6865, Ext. 8772
LatashiaH@gabar.org

Latashia can assist you with meeting or consultation scheduling and to request materials from the LPM Resource Library.

LAW PRACTICE MANAGEMENT RESOURCE LIBRARY

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www.gabar.org

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- mobile access is also available through the App Store and Google Play (no charge to download app)
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- requested items are available for pick up or delivery through interoffice mail, and articles will be emailed. Contact the Information Desk for assistance.

Pick Up and Mail Delivery of Materials Available – You may pick up your materials at no charge at the State Bar. If delivery by mail, there is an up-front shipping fee of \$5 for the first item and \$2.50 for each additional item. You may remit payment for postage through the State Bar Web Store at www.gabar.org under the Law Practice Management products. We will ship materials upon receipt of request. We accept MasterCard, Visa or American Express. Please allow at least five-day grace period to receive your material via mail.

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Getting Started with Planning for the Unexpected: Closing Your Law Practice in the Event of Your Absence, Disability or Death

This Help Document provides a basic introduction to working with Adobe Inc.'s proprietary PDF documents using Adobe's READER program, version XI. A full discussion of features and capabilities is available at:
<http://helpx.adobe.com/reader/html>.

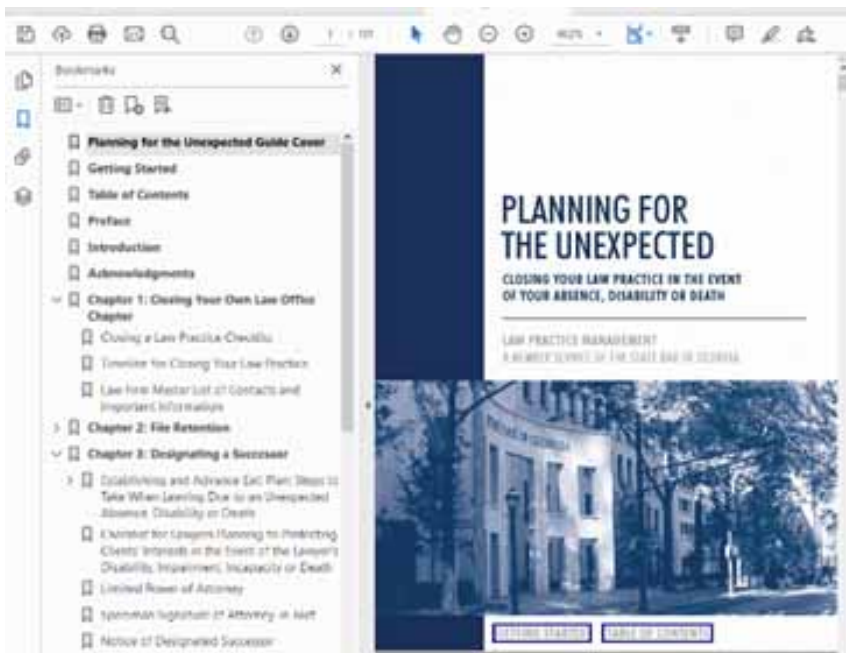
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This e-Book contains the entire contents of the publication. The structure of this material is specifically set to provide easy and quick access to any section or sub-section with a minimum of mouse clicks. By utilizing both “Bookmarks” and “hyperlinks” (links), the user can go directly to the area of interest or, conversely, scroll page by page through the entire document if desired. This product is entirely formatted in the Adobe PDF structure and requires that Adobe Reader or other suitable software be installed on your computer.

NAVIGATING WITHIN THE PUBLICATION

Opening this e-Book displays the cover of the publication where several buttons have been added. Clicking your mouse on the button of interest will take you to the desired material. As you have already discovered, clicking the “Getting Started” button brought you to this help document. Clicking the “Table of Contents” button will take you to a list of the sections in the publication with each title a link which, when clicked, will display the first page of that section.

When you follow links that take you into the text of the publication, the initial page of the selected chapter or sub-part will be displayed. Along with the text, a separate panel will also be displayed on the left side of the screen which contains a list of all the Bookmarks contained in the publication. An alternate method of navigating through the material is to click on the desired location displayed in this Panel.

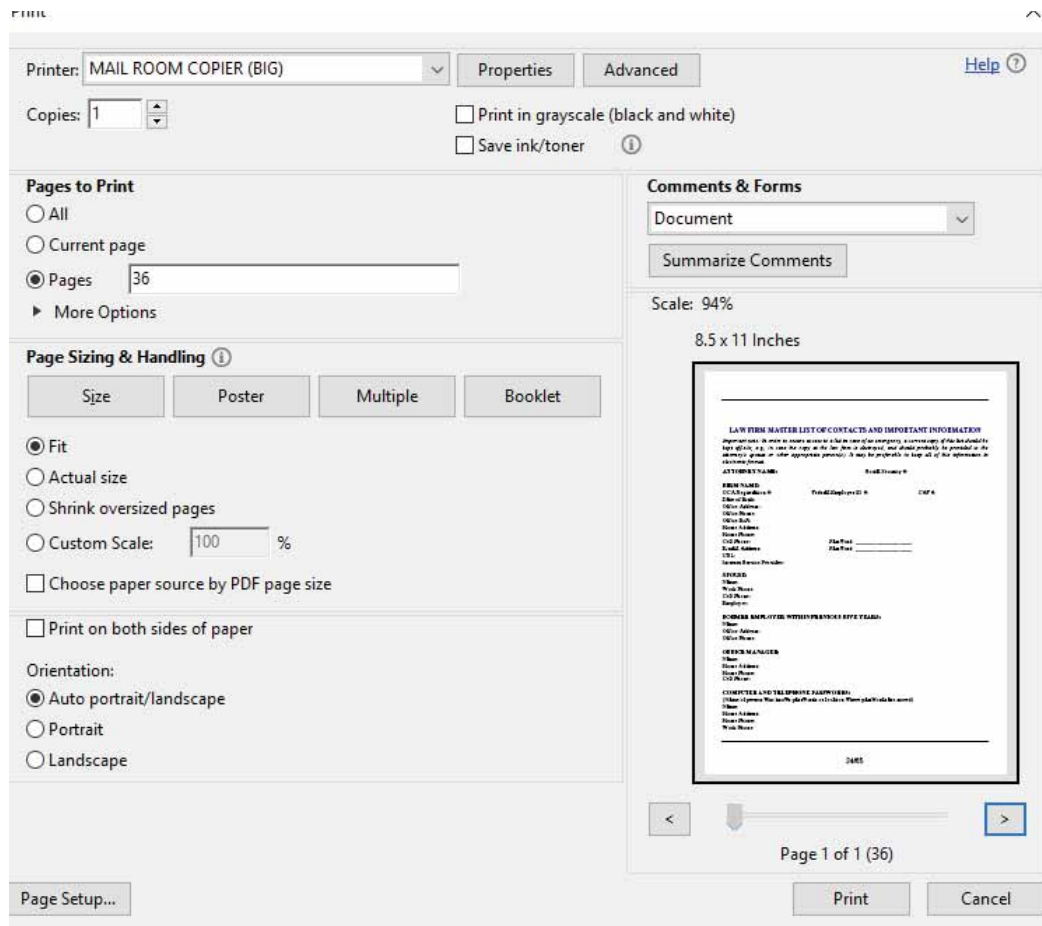


State Bar of Georgia Planning for the Unexpected Guide

Note: We recommend downloading the publication to your computer as opposed to viewing the publication in your web browser. If you choose to view in your browser, please note the publication bookmark panel may not open automatically and links, when clicked, may open in the same window and require you to utilize your "back" button to return to the e-book. Refer to your browser's help guide to learn more about navigating bookmarked/linked PDFs in your browser.

Printing selected pages

While viewing the desired page that you wish to print, right click your mouse while it points to the Bookmark in the left hand panel (not to the text in the page displayed which sets up the whole volume to be printed). Then select the “PRINT” option from the drop-down list. A window will open which provides the necessary controls to print the desired page (see diagram on the following page).



Note especially that the option to print “Pages” is selected. If “ALL” is specified, the complete book will be printed. Therefore, be very careful to insure the “PAGES” option is selected and the desired page number(s) is shown BEFORE clicking the “PRINT” button at the bottom of the window. The page number of the page you are viewing is shown to the right of the Pages option and also under the small display of the page in the lower right of the screen (in this example it is “Page 1 of 1 (35)” thus you are viewing page 35 of the document).



The following material is taken directly from the “Help” function of Adobe Reader and provides additional details regarding functionality of PDF documents.

Opening pages in PDF

Depending on the PDF you open, you may need to move forward through multiple pages, see different parts of the page, or change the magnification. There are many ways to navigate, but the following items are commonly used:

***Note:** If you do not see these items, choose View > Show/Hide > Toolbar Items > Reset Toolbars.*


Next and Previous

The Next Page  and Previous Page  buttons appear in the Page Navigation toolbar. The text box next to them is also interactive, so you can type a page number and press Enter to go directly to that page.

Scroll bars



Vertical and horizontal scroll bars appear to the right and bottom of the document pane whenever the view does not show the entire document. Click the arrows or drag to view other pages or different areas of the page.

Select & Zoom toolbar

The Page Thumbnails  button on the left side of the work area opens the navigation pane to the Page Thumbnails panel, which displays thumbnail images of each page. Click a page thumbnail to open that page in the document pane.



Page through a document

There are many ways to turn pages in a PDF. Many people use the buttons on the Page Navigation toolbar, but you can also use arrow keys, scroll bars, and other features to move forward and backward through a multipage PDF.

The Page Navigation toolbar opens by default. The default toolbar contains frequently used tools: the Show Next Page , Show Previous Page , and Page Number. Like all toolbars, the Page Navigation toolbar can be hidden and reopened by choosing it in the Toolbars menu under the View menu. You can display additional tools on the Page Navigation toolbar by right-clicking the toolbar and choosing an individual tool, Show All Tools, or More Tools and then selecting and deselecting tools in the dialog box.

Move through the PDF

❖ Do one of the following:

- Click the Previous Page  or Next Page  button on the toolbar.
- Choose View > Page Navigation > [location].
- Choose View > Page Navigation > Page, type the page number in the Go To Page dialog box and then click OK.
- Press the Page Up and Page Down keys on the keyboard.

Jump to a specific page

❖ Do one of the following:

- From Single Page or Two-Up page display view, drag the vertical scroll bar until the page appears in the small pop-up display.
- Type the page number to replace the one currently displayed in the Page Navigation toolbar, and press Enter.

***Note:** If the document page numbers are different from the actual page position in the PDF file, the page's position within the file appears in parentheses after the assigned page number in the Page Navigation toolbar. For example, if you assign numbering for a file that is an 18-page chapter to begin with page 223, the number shown when the first page is active is 223 (1 of 18). You can turn off logical page numbers in the Page Display preferences. See [Renumber pages](#) (Acrobat only) and [Preferences for viewing PDFs](#).*

Navigate with Links

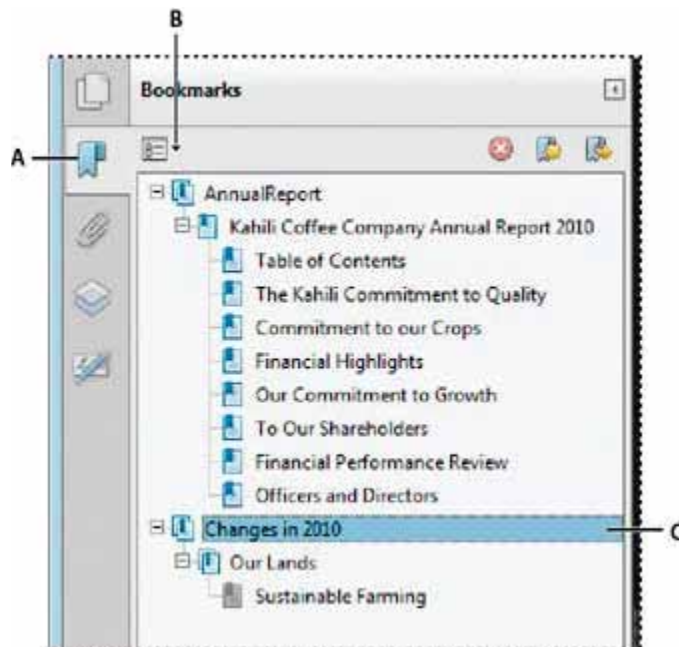
Links can take you to another location in the current document, to other PDF documents, or to websites. Clicking a link can also open file attachments and play 3D content, movies, and sound clips. To play these media clips, you must have the appropriate hardware and software installed. The person who created the PDF document determines what links look like in the PDF.

***Note:** Unless a link was created in Acrobat using the Link tool, you must have the Create Links From URLs option selected in the General preferences for a link to work correctly.*

1. Choose the Select tool.
2. Position the pointer over the linked area on the page until the pointer changes to the hand with a pointing finger. A plus sign (+) or a *w* appears within the hand if the link points to the web. Then click the link.

Jump to bookmarked pages

Bookmarks provide a table of contents and usually represent the chapters and sections in a document. Bookmarks appear in the navigation pane.



Bookmarks panel

A. Bookmarks button

B. Click to display bookmark options menu.

C. Expanded bookmark

1. Click the Bookmarks button, or choose View > Show/Hide > Navigation Panes > Bookmarks.

2. To jump to a topic, click the bookmark. Expand or collapse bookmark contents, as needed.

***Note:** Depending on how the bookmark was defined, clicking it may not take you to that location but perform some other action instead.*

If the list of bookmarks disappears when you click a bookmark, click the Bookmarks button to display the list again. If you want to hide the Bookmarks button after you click a bookmark, select Hide After Use from the options menu.

Automatically scroll through a document

Automatic scrolling advances your view of the PDF at a steady rate, moving vertically down the document. If you interrupt the process by using the scroll bars to move back or forward to another page or position, automatic scrolling continues from that point forward. At the end of the PDF, automatic scrolling stops and does not begin again until you choose automatic scrolling again.

1. Choose View > Page Display > Automatically Scroll.
2. Press Esc to stop scrolling.

PDFs with file attachments

If you open a PDF that has one or more attached files, the Attachments panel automatically opens, listing the attached files. You can open these files for viewing, edit the attachments, and save your changes, as permitted by the document authors.

If you move the PDF to a new location, the attachments automatically move with it.



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