



MANUAL FOR DISPOSITION OF A LAW PRACTICE IN OHIO

SECOND EDITION

DISCLAIMER

IMPORTANT! Any advice or opinions expressed in this Manual are solely furnished for your guidance and use in evaluating a possible resolution to your question. No attorney-client relationship is intended to be created between you/your client and the Cleveland Metropolitan Bar Association (CMB A). You are expected to exercise your own professional judgment in this matter. Any advice or opinions from the Manual should merely be considered as one factor in making your own analysis and decisions independent of the Manual. Furthermore, any advice or opinions from the Manual have not been researched, reviewed, approved, or formally adopted by the Cleveland Metropolitan Bar Association or its Committees, and reliance thereon will be at the risk of the inquiry attorney.

© 2009 Cleveland Metropolitan Bar Association

TABLE OF CONTENTS

	<u>Page</u>
ACKNOWLEDGEMENTS	1
PART I - LAWYER DISABILITY	2
AGREEMENT FOR CONTINUATION OR TERMINATION OF LAW PRACTICE	6
ACCEPTANCE OF ALTERNATE	17
ATTORNEY OFFICE REFERENCE LIST	18
SAMPLE LETTERS:	
FROM DESIGNEE TO CLIENT - INCAPACITY	33
FROM DESIGNEE TO LESSORS, VENDORS, ETC. – INCAPACITY	34
FROM DESIGNEE TO MALPRACTICE INSURER - INCAPACITY	35
FROM DESIGNEE TO BANK HOLDING TRUST AND OPERATING ACCOUNTS - INCAPACITY	36
FROM DESIGNEE TO JUDGE - INCAPACITY	37
FROM DESIGNEE TO INCAPACITATED ATTORNEY’S STAFF - INCAPACITY	38
FROM ATTORNEY TO CLIENT: INCAPACITY	40
PART II - LAWYER RETIREMENT	41
PART III - LAWYER DEATH	46
SAMPLE LETTERS:	
FROM DESIGNEE TO CLIENT - DEATH	55
FROM DESIGNEE TO BANK HOLDING TRUST AND OPERATING ACCOUNTS - DEATH	56
FROM DESIGNEE TO MALPRACTICE INSURER - DEATH	57

	<u>Page</u>
FROM DESIGNEE TO ATTORNEY’S SPOUSE - DEATH	58
FROM DESIGNEE TO JUDGE - DEATH	60
FROM DESIGNEE TO LESSORS, VENDORS, ETC. - DEATH	61
FROM DESIGNEE TO STAFF - DEATH	62
PART IV - SALE OF A LAW PRACTICE	64
BIBLIOGRAPHY	70
OTHER RESOURCES	71

ACKNOWLEDGEMENTS

The Ethics and Professionalism Committee of the Cleveland Metropolitan Bar Association would like to thank the following individuals for their contributions of time and talent to the Manual For Disposition of a Law Practice in Ohio:

First Edition

Lee A. Koosed

Crede Calhoun

Jack P. Sahl

Scott Rawlings

Robert R. Hussey II

Benjamin F. Farah

Second Edition

Harry D. Cornett, Jr.

Susan M. Evans

John A. Hallbauer

Thomas D. Robenalt

Carol Rogers Hillard

Curtis Tuggle

PART I
LAWYER DISABILITY

LAWYER DISABILITY

Unlike death and taxes, it is not inevitable that a lawyer will incur a period of disability. However, if a disability of any significant period should occur, it can have a devastating effect on the lawyer's professional practice and personal life and put clients' interests at risk.

To guard against these circumstances, advanced planning is required. The ability to continue to maintain a viable law practice is essential to clients, the lawyer and/or the lawyer's family. Under the Ohio Rules of Professional Conduct, Rule 1.16(a)(2), a lawyer must withdraw from the representation of a client when "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client." Further, planning must comport with the requirements of Ohio Rules of Professional Conduct concerning relations between a lawyer and a client; for example, Rule 1.1 ("[a] lawyer shall provide competent representation to a client."); Rule 1.3 ("[a] lawyer shall act with reasonable diligence and promptness in representing a client."); Rule 1.4(a)(2) (a lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished;"); Rule 1.6(a) ("[a] lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation...."); and Rule 1.15 (regarding the safe-keeping of funds and property of clients). For additional applicable rules and guidance, refer to the Ohio Rules of Professional Conduct and comments therein.

There is no one way by which these various goals may be accomplished. Each case may have its own unique circumstances which need to be considered and dealt with individually.

The materials in this section are a series of suggestions to the legal community on how to plan for the issues of a lawyer's disability. Planning for this type of problem is the best way to minimize the complications that a period of disability will have for all of those persons associated with the lawyer. In addition to addressing concerns regarding disability, the materials may also be useful for a lawyer facing a prolonged military activation.

The materials included are as follows:

- (1) **Agreement for Continuation or Termination of Law Practice:** This multi-use document permits the lawyer to arrange with someone of his own choosing to deal with the issues of disability or death. It is a comprehensive document that deals with all the essential issues raised by lawyer disability.
- (2) **Attorney Office Reference List:** Provides basic information for all aspects of the disabled lawyer's law practice. The list needs to be updated periodically so that there will be a smooth transition upon the occurrence of a disability.
- (3) **Letter to Client:** This basic form allows for prompt notification of all clients regarding the lawyer's disability. It provides important reassurance to the client, so the client can make an informed decision as to what to do with the client's own matter during the period of disability.
- (4) **Letter to Vendors/Lessors:** This allows for continuation of the business aspects of the disabled lawyer's practice. Prompt notice in these matters will minimize concern over the disability.

- (5) **Letter to Malpractice Insurer:** This letter will be important to maintain proper insurance coverage during the period of disability and to make whatever adjustments may be required under the existing policy.
- (6) **Letter to Bank:** In order to continue to operate the law practice as a viable business, this letter protects the financial health of the practice during the disability period.
- (7) **Letter to Judge:** This keeps the Court aware of a problem and what is being done about it. Copies should always be sent to the client and opposing counsel in the particular matter.
- (8) **Letter to Attorney Staff:** This provides stability to the law practice so that the business of the disabled lawyer may remain viable by using the existing staff when possible.

**AGREEMENT FOR CONTINUATION OR TERMINATION
OF LAW PRACTICE**

This Agreement for Continuation or Termination of Law Practice (“Agreement”), dated _____, is entered into between A, Attorney at Law, of Cleveland, Ohio (“A”), and B, Attorney at Law, of Cleveland, Ohio (“B”).

RECITALS

1. Whereas A desires to appoint B to serve in the capacities herein specified, for the benefit of A, A’s heirs, estate and clients in order to continue or terminate A’s law practice in the event of A’s disability or death.

2. Whereas the protection of the rights and privileges of A’s clients and the protection of the attorney-client relationship between A and his clients are of overriding importance to the parties to this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises set forth herein, the parties agree:

Section 1. Definition. Unless the context otherwise requires, the following definitions shall apply to this Agreement:

1.1. “State Bar” means the Ohio State Bar Association.

1.2. “Representative” means the executor, administrator or personal representative of A’s Estate in the event of A’s death, or A’s legal representative in the event of A’s disability. If A is competent to designate a Representative, the person so designated shall serve as A’s “Representative” for purposes of this Agreement. If a Representative has not been designated nor appointed or if a Representative is not acting, the term “Representative”

shall include A's spouse or next of kin or other appropriate person who is acting on behalf of A in the event he is disabled or deceased.

1.3. "Disability" means any condition whereby A has been declared to be under a legal disability by a Court of competent jurisdiction or a condition whereby A is so incapacitated as to make it impossible or impracticable for him to give prompt and intelligent consideration to business matters. An unexplained absence from the practice of law for a period of 14 or more consecutive days shall also constitute a disability for purposes of this Agreement.

1.4 "Death" shall mean A's demise subsequent to the effective date of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to provide assistance to A's Representative in the continuation of A's law practice if A is disabled and in the disposition of A's law practice if A is deceased.

Section 3. Establishing Disability. In determining whether A is disabled, B may act upon such evidence as she shall deem reasonably reliable, including, but not limited to, communications with A's Representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Similar evidence or medical opinions may be relied upon to establish that A's disability has terminated. B is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement.

Section 4. Notification of Clients. Upon A's disability or death, B shall, as soon as appropriate under the circumstances, send a letter (Suggested "Form 1", attached) to each of A's clients advising of A's disability or death. B shall also advise A's clients that B has been named to assist A's Representative in continuing or winding up A's law practice, as the case may be. If

A is disabled and if, in B's judgment, a personal notification from A to his clients can be obtained and is appropriate under the circumstances, B may prepare and obtain A's signature upon such notification (Suggested "Form 7", attached). After signature by A, B shall promptly send a copy of the notification to A's clients. A shall also notify any other persons or entities as may be appropriate under the circumstances.

Section 5. Undertakings in Event of Disability or Death.

5.1. B agrees to serve as provided herein, unless B is unwilling or unable to do so at the time of A's disability or death. During such time as B or B's alternate, who is identified in Section 9.2, is acting under this Agreement, A designates B and/or B's alternate to act as A's special trustee, attorney-in-fact, conservator, special administrator or special personal representative of A's estate. When acting in any of these capacities, B's or B's alternate's powers shall be specifically limited to actions which are required to carry out the provisions of this Agreement and to continue or wind up A's professional practice of law in the event of A's disability or death. If B declines to act on A's behalf, B shall promptly notify A's Representative and confirm such notice in writing. In such event, B's alternate shall then be eligible to act under this Agreement.

5.2. B may serve as A's designee under any statute, rule, regulation, or requirement of any Federal or State court or of the State Bar for the purpose of continuing, conducting or terminating A's professional law practice upon A's disability or death. A, while not under disability, shall have the power to designate and appoint other or additional qualified individuals to carry out the provisions of this Agreement.

5.3. In the event of A's disability, A hereby designates B as signator to, or in substitution of A's signature, on all of A's law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts and trust (including IOLTA) accounts. A agrees on behalf of himself, his heirs, and his estate, to indemnify and hold any such bank or financial institution harmless against any loss suffered as a result of such bank's or financial institution's good faith actions and reliance upon the power of attorney or other powers granted herein without having received notice of revocation of such power. If required by any bank or financial institution, A or A's Representative shall execute and deliver any documents which may be necessary to authorize B to carry out the provisions of this subparagraph.

5.4. B shall review all of A's law office files and, subject to the wishes and directions of A's clients, shall take such action as B deems appropriate, including the prompt return of files to clients, retention of other attorneys to provide legal services to clients or individually providing legal services for specific clients in the areas of practice with which B is familiar. When files are to be returned to clients, B shall retain copies of such portions of the client's file or files as in B's judgment should be retained for future reference.

5.5. While acting under this Agreement, B shall perform the following fiscal functions:

5.5.1. Inventory and collect A's law office accounts receivable with diligence;

5.5.2. Invoice and collect any unbilled fees from clients for services rendered by A prior to the date of A's death or disability;

5.5.3. Invoice and collect any unbilled costs advanced on behalf of any client;

5.5.4. Deposit all receipts from A's law practice into A's law office bank accounts and make disbursements from such accounts in payment of A's law firm obligations, including the continuation and operation of A's law office, but excluding any obligations not related to A's law practice;

5.5.5. Inventory the assets and list the liabilities of A's law practice.

5.5.6. B shall use care to ensure that funds which should be categorized and treated as "trust" funds are deposited in A's trust account or accounts, including IOLTA accounts, and that any funds disbursed therefrom shall be in keeping with applicable ethical and legal requirements;

5.5.7. Pay over to A's Representative, on a monthly basis and at such other times as B may deem appropriate, all funds which are deemed by A's Representative to be in excess of reasonable requirements for carrying out B's responsibilities hereunder;

5.5.8. Request A's Representative to advance any funds reasonably necessary to carry out the provisions of this Agreement;

5.5.9. Render an interim accounting to A's Representative at the end of each six-month period after B's assumption of responsibility hereunder, and a final accounting at the conclusion of such responsibilities. Such final accounting shall be accompanied or preceded by final distribution to A's Representative of all funds remaining in B's hands pursuant to this Agreement;

5.5.10. The terms and conditions of any retainer agreement between A and any of A's clients shall remain in full force and effect, notwithstanding A's death or

disability, subject, however, to the substitution of legal counsel to perform the services undertaken by A pursuant to such retainer agreement; and

5.5.11. Substitution of counsel shall be arranged pursuant to this Agreement, but only with the client's prior consent and approval.

Section 6. Delivery of Personal Property. Unless necessary to continue or wind up A's law practice, B shall deliver A's personal property, furniture, fixtures, equipment and records to A's Representative; provided, however, that the disposition of A's clients' files and documents shall be subject to the written directions of the affected clients. B shall make arrangements with A's Representative for the temporary and permanent storage of, and access to, clients' files (or copies thereof) retained on A's behalf.

Section 7. Completion of Pending Matters; Compensation.

7.1. B shall facilitate the completion of each matter pending at the time of A's death or disability. If the respective clients shall so approve, pending matters shall be completed by B herself or by attorneys designated by B; otherwise pending matters shall be turned over to the attorneys or other persons designated by the respective clients. Files relating to pending matters shall be retained by B or delivered to such other attorneys or other persons, as the case may be. As to any matter not to be completed by B, she shall retain copies of all or such portion of the related files as she shall deem appropriate.

7.2. B shall not commit A's Representative to responsibility for compensation to an attorney (including B herself) to whom a pending matter is transferred. Such attorney shall look solely to the client for compensation for completion of a pending matter, except to the extent that A received advance payment of fees and/or disbursements in excess of amounts earned or disbursed by A. B shall endeavor to obtain reimbursement for the benefit of A's Representative for any incidental expenses (such as the services of accountants, photocopies, secretaries, movers and others) necessarily incurred in transferring pending matters, but B shall have authority to incur such expenditures even where no such reimbursement can be or is obtained.

7.3. In the case of pending matters on a contingent-fee or other basis where the amount payable for the services rendered by A prior to his death or disability is not clearly determinable, the following shall apply:

7.3.1. If an attorney other than B (whether designated by B or by the client) is retained to complete the matter, B shall negotiate with such other attorney as to a fair and equitable division of any ultimate fee recovery between A's Representative and such other attorney. If agreement for such division is not obtained, B shall endeavor to obtain such other attorney's agreement to arbitration of the fee division under State Bar auspices. If such arbitration agreement is not obtained, B may bring an action or may refer the matter to A's Representative to obtain adjudication of such division; or

7.3.2. If B herself is retained to complete the matter, the division of any ultimate fee recovery between B and A's Representative shall be submitted to arbitration

under State Bar auspices, except that arbitration shall not be required if A's Representative is an attorney or is represented by independent counsel and agrees with B as to the division.

Section 8. Spendthrift provision. B shall not recognize any transfer, mortgage, pledge, hypothecation, assignment, or order (other than by A while not under disability) which anticipates the payment of any part of the income from A's law practice.

Section 9. Appointment of Attorney-in-Fact.

9.1. A hereby appoints B as his attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as A could do personally as though A were not disabled. It is A's specific intent that this appointment of B as his attorney-in-fact shall become effective only upon A's disability; provided, that the appointment of B shall not be invalidated because of A's incapacity or disability, but instead the appointment shall fully survive such disability or incapacity and shall be fully enforceable so long as it is necessary or convenient to carry out the terms of this Agreement.

9.2. If B is unable or unwilling to act on behalf of A, A appoints as B's Alternate, (name) _____, Attorney at Law, (address) _____, to act on behalf of A under this Agreement. As shown by the acceptance which appears on the final page of this Agreement, B's Alternate has consented to act hereunder.

Section 10. Termination.

10.1. This Agreement shall be terminated upon the happening of either of the following events:

10.1.1. Delivery of a written notice of termination by A to B during any time that A is not under Disability; or

10.1.2. Delivery of a written notice of termination given by B to A, or if A is deceased or under disability, to A's Representative, subject to any ethical obligation to continue or complete any matter undertaken by B pursuant to this Agreement.

10.2. While B or B's Alternate is acting on behalf of A under this Agreement, A's Representative cannot terminate or discharge B or B's Alternate except for good cause shown.

10.3. If, while acting on behalf of A, B or B's Alternate ceases for any reason to act on A's behalf, B (or his Alternate if then acting) shall (1) within thirty (30) days prepare and file with A's Representative a full and accurate accounting of any financial activities undertaken on A's behalf and (2) turn over to A's Representative, all of A's funds, files and records.

Section 11. Disputes. Any controversy or claim arising out of or relating to this Agreement or any breach thereof shall be settled by arbitration administered by the Ohio State Bar Association in accordance with its applicable rules. If no rules have been adopted by the Ohio State Bar Association with regard to arbitration proceedings, the rules of commercial arbitration of the American Arbitration Association shall apply, provided, however, a single arbitrator or a panel of arbitrators may be utilized as agreed by the parties to the dispute. If the parties are unable to agree, a single arbitrator shall act. Any arbitration shall take place in Cuyahoga County, Ohio.

Section 12. Indemnification. A and A's heirs, personal representatives and assigns do hereby indemnify B and B's Alternate (and their heirs and personal representatives) against any claims, loss or damage arising out of any act or omission by B or B's Alternate under this Agreement, if B or his Alternate acted, or failed to act, in good faith and in a manner reasonably believed to be in A's best interest, excepting only gross negligence and willful misconduct.

Section 13. Controlling Law. The parties to this Agreement are subject to and shall be bound by all Rules of professional conduct and any other Federal, State or local rules or laws which apply to the legal profession within the State of Ohio and B shall carry out her responsibilities under this Agreement pursuant to such rules and laws. This Agreement shall be construed and enforced under the laws of the State of Ohio, and shall be binding upon the heirs, personal representatives and assigns of the parties.

A

B

STATE OF OHIO)
 :SS
COUNTY OF)

The foregoing Agreement was acknowledged before me this ____ day of _____,
____, by A, for the purposes therein contained.

Notary Public

STATE OF OHIO)
 :SS
COUNTY OF)

The foregoing Agreement was acknowledged before me this ____ day of _____,
____, by B, for the purposes therein contained.

Notary Public

ACCEPTANCE OF ALTERNATE

I hereby agree to act as B's Alternate pursuant to the foregoing Agreement.

DATE: _____

NAME: _____

Attorney at Law (Alternate)

ADDRESS: _____

ATTORNEY OFFICE REFERENCE LIST

ATTORNEY NAME: _____

FIRM NAME: _____

SOCIAL SECURITY #: _____

STATE BAR #: _____

**FEDERAL EMPLOYER
IDENTIFICATION #:** _____

**STATE TAX
IDENTIFICATION #:** _____

Office Address: _____

Office Phone: _____

Office Fax: _____

Office Email: _____

Office Website: _____

Home Address: _____

Home Phone: _____

SPOUSE'S NAME: _____

Cell Phone: _____

Email: _____

Work phone: _____

Fax: _____

Employer: _____

**OFFICE MANAGER/
SECRETARY:** _____

Address: _____

Phone:

**PROCESS SERVICE
COMPANY:**

Address:

Phone:

Contact:

**MESSENGER SERVICE
COMPANY:**

Address:

Phone:

Contact:

ACCOUNTANT:

Address:

Phone:

BOOKKEEPER:

Address:

Phone:

**PERSONAL
REPRESENTATIVE:**

Address:

Phone:

**LOCATION OF
WILL &/OR
TRUST:**

**ACCESS WILL &/OR
TRUST BY
CONTACTING:**

Address:

Phone:

ATTORNEY:

Address:

Phone:

**OF COUNSEL
WITH:**

Address:

Phone:

and:

Address:

Phone:

**FOR PROFESSIONAL
CORPORATIONS:**

Corporate name:

Date incorporated:

Location of corporate
minute book:

Location of corporate
seal:

Location of corporate
stock certificates:

Location of corporate
tax returns:

Fiscal year end date:

Corporate attorney:

Address:

Phone:

**NOMINEES TO
HELP WITH
PRACTICE
CONTINUATION/
CLOSING:**

First choice:

Address:

Phone:

Second choice:

Address:

Phone:

Third choice:

Address:

Phone:

Fourth choice:

Address:

Phone:

**INSURANCE
AGENTS/COVERAGE:**

Building agent:

Address:

Phone: _____
Insurer: _____
Policy #: _____
Address: _____

Phone: _____

Errors & omissions agent:

Address: _____

Phone: _____
Insurer: _____
Policy #: _____
Address: _____

Phone: _____

Health agent:

Address: _____

Phone: _____
Insurer: _____
Policy #: _____
Address: _____

Phone: _____

Persons covered: _____ S or F: _____
_____ S or F: _____
_____ S or F: _____
_____ S or F: _____
_____ S or F: _____
_____ S or F: _____
_____ S or F: _____
_____ S or F: _____

Life agent:

Address: _____

Phone: _____
Insurer: _____
Policy #: _____

Address: _____

 Phone: _____
 Persons covered: _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____
 _____ S or F: _____

STORAGE LOCKER LOCATIONS:

Locker number: _____ of (storage company) _____
 Address: _____

 Obtain key from: _____
 Name: _____
 Address: _____

 Phone: _____
 Items stored: _____

Locker number: _____ of (storage company) _____
 Address: _____

 Obtain key from: _____
 Name: _____
 Address: _____

 Phone: _____
 Items stored: _____

Locker number: _____ of (storage company) _____
 Address: _____

Other signatory:

Name:

Address:

Phone:

LEASES:

Item(s) leased:

Lessor:

Name:

Address:

Phone:

Expiration:

Item(s) leased:

Lessor:

Name:

Address:

Phone:

Expiration:

Item(s) leased:

Lessor:

Name:

Address:

Phone:

Expiration:

Item(s) leased:

Lessor:

Name:

Address:

Phone:

Expiration:

**BUSINESS
FINANCIAL
ACCOUNTS:**

IOLTA:

Institution: _____
Address: _____

Phone: _____
Number: _____

Other signatory:
Name: _____
Address: _____

Phone: _____

General operating:

Institution: _____
Address: _____

Phone: _____
Number: _____

Other signatory:
Name: _____
Address: _____

Phone: _____

Other: _____

Institution: _____
Address: _____

Phone: _____
Number: _____

Other signatory:
Name: _____
Address: _____

Phone: _____

Other:

Institution:

Address:

Phone:

Number:

Other signatory:

Name:

Address:

Phone:

Other:

Institution:

Address:

Phone:

Number:

Other signatory:

Name:

Address:

Phone:

MAINTENANCE CONTRACTS:

Item(s) covered:

Vendor name:

Address:

Phone:

Expiration:

Item(s) covered:

Vendor name:

Address:

Phone:

Expiration:

Item(s) covered:

Vendor name: _____
Address: _____

Phone: _____
Expiration: _____

**ALSO ADMITTED TO PRACTICE
WITH THESE STATES:**

State of: _____
Bar Address: _____

Phone: _____
ID no.: _____

State of: _____
Bar Address: _____

Phone: _____
ID no.: _____

State of: _____
Bar Address: _____

Phone: _____
ID no.: _____

State of: _____
Bar Address: _____

Phone: _____
ID no.: _____

COURTS IN WHICH CASES ARE PENDING:

Court: _____
Address: _____

Phone: _____
Case list: One - attached.

Court: _____
Address: _____
Phone: _____
Case list: Two - attached.

Court: _____
Address: _____
Phone: _____
Case list: Three - attached.

Court: _____
Address: _____
Phone: _____
Case list: Four - attached.

Court: _____
Address: _____
Phone: _____
Case list: Five - attached.

ADMINISTRATIVE AGENCIES IN WHICH ACTIONS ARE PENDING:

Administrative Agency: _____
Address: _____
Phone: _____
Action Pending: _____

Administrative Agency: _____
Address: _____

Phone: _____
Action Pending: _____

Administrative Agency: _____
Address: _____

Phone: _____
Action Pending: _____

Administrative Agency: _____
Address: _____

Phone: _____
Action Pending: _____

Administrative Agency: _____
Address: _____

Phone: _____
Action Pending: _____

Administrative Agency: _____
Address: _____

Phone: _____
Action Pending: _____

FORM 1

FROM DESIGNEE TO CLIENT-INCAPACITY

B
Attorney
Address
Phone

(date)

Client Name
Address

Re: A

Dear Client:

As you may know, Attorney A has become incapacitated and is unable to continue to represent you in your pending legal matter for the time being. It is anticipated that the incapacity will last _____/an indefinite period of time.

As you may know, Attorney A made arrangements with me to assist his clients in the event such a situation would occur.

At this time, I have custody/anticipate taking custody of his files and wills. I will need your directions as to what you want done with your file/will. Each client may choose his or her own new counsel to complete pending legal matters. It is important that I hear from you as soon as possible, as there may be deadlines in your case to be met.

If your matter is concluded, I will still need to know what you would like done with your file.

Please contact me to discuss these matters and any other questions you may have concerning your legal matter at this time.

Very truly yours,

B
Attorney at Law

cc: A

FORM 2

FROM DESIGNEE TO VENDORS, LESSORS, ETC.-INCAPACITY

A
Attorney
Street Address
City/State/Zip
(216) 000-0000

(date)

Vendor name
Street address
City/State/Zip

Re: A

Dear Vendor:

As you may know, Attorney A is presently incapacitated. Prior to his incapacity, Attorney A made arrangements with me to assist his clients if such a situation would occur. I will also be managing his business operations during the interim. Please direct your communications concerning Attorney A's practice to my attention at the above address. Every effort will be made to honor all of Attorney A's just commitments.

Please contact me by mail concerning these matters and any other questions you may have. If there are any urgent matters requiring attention, please call me at the above number.

Very truly yours,

B
Attorney at Law

cc: A

FORM 3

FROM DESIGNEE TO MALPRACTICE INSURER-INCAPACITY

B
Attorney at Law
Address
Phone

(date)

Malpractice Insurance Company
Address

Re: A

Dear Insurance Company:

Please be advised that Attorney A, a sole practitioner, is presently incapacitated. It appears that he will be unable to serve his clients for (a period of time). Attorney A made arrangements with me to assist his clients in the event of such a situation, as is shown in the enclosed agreement.

At this time, I have custody of his files and wills. I will seek to reach each client for directions. If your firm is able to provide any assistance, or if you need additional information, please advise.

Very truly yours,

B
Attorney at Law

cc: A

FORM 4

**FROM DESIGNEE TO BANK HOLDING TRUST AND
OPERATING ACCOUNTS - INCAPACITY**

B
Attorney at Law
Address
Phone

Bank Name
Address

Re: Attorney A

Dear Bank:

As you may be aware, Attorney A, a sole practitioner, is presently incapacitated. It appears that he will be unable to serve his clients for (a period of time). Attorney A made arrangements with me to assist his client in the event of this situation, as is shown in the enclosed agreement.

Attorney A has given me a durable special power of attorney giving me the power of signature over his trust account number _____. A certified copy of this document is enclosed. It will be necessary for me to determine the amounts due Attorney A's family and the amounts due to clients for refunds, and to disburse funds in a timely manner.

The durable special power of attorney also gives me the power to sign checks on Attorney A's operating account. It will be necessary for me to determine the amounts due for necessary expenses during the period of disability and the amounts due Attorney A's family, and to disburse funds in a timely manner.

Please advise your staff to honor my signature on Attorney A's accounts.

Very truly yours,

B
Attorney at Law

Enclosure
cc: A

FORM 5

FROM DESIGNEE TO JUDGE - INCAPACITY

B
Attorney at Law
Address

(date)

The Honorable _____
Address

Re: A

Dear Judge _____:

As you may know, Attorney A has become incapacitated. It is anticipated that he will be unable to perform his duties to clients for some time. Attorney A had made arrangements with me to assist his clients in the event of such a situation.

I am reviewing Attorney A's files to determine any pressing matters, and attempting to reach his clients to give them the opportunity to select alternate counsel. Meanwhile, I do hope that you will grant forbearance to Mr. A's clients, as to any deadlines affecting their cases. As soon as I am able to do so, I will advise you of any cases which are pending in your Court.

Please contact me if you have any comments or questions.

Very truly yours,

B
Attorney at Law

cc: A
Opposing Counsel

FORM 6

FROM DESIGNEE TO INCAPACITATED ATTORNEY'S STAFF - INCAPACITY

B
Attorney at Law
Address
Phone

(date)

Staff person's name
Address

Re: A

Dear Ms. Worker:

As you may be aware, Attorney A has become incapacitated. Attorney A had made arrangements with me to assist his clients in the event of such a situation, as is shown in the enclosed agreement.

ALTERNATE 1:

At this time, I have custody of Mr. A's files and wills. I will seek to reach each client for directions. Each client has the option to choose new counsel to complete pending legal matters.

ALTERNATE 2:

At this time, I will need immediate access to Attorney A's office to take custody of his files and wills, so I can seek to reach each client for directions. Each client has the option to choose new counsel to complete pending legal matters. Time is of the essence as there may be important deadlines in certain cases, and of course each current client will certainly want to make certain that continued representation is available.

As to closed files, I will need to make arrangements to return them to the clients if possible. In other cases, permanent storage may be necessary.

Your continued service to the practice would be appreciated. I am authorized to continue your salary for the present and hope to do so until such time as decisions have been made about the continuation or termination of Mr. A's practice. Please let me know that I can count on you at this time.

(date)
Page 2

Please contact me to discuss these matters and any other concerns you may have concerning Mr. A's practice at this time.

Very truly yours,

B
Attorney at Law

cc: A

FORM 7

FROM ATTORNEY TO CLIENT: INCAPACITY

B
Attorney at Law
Address

(216) 000-0000

(date)

Client Name
Address

Dear Client:

I have recently become incapacitated and will be unable to continue to represent you in your pending legal matter for the time being.

I have made arrangements with Attorney B to assist my clients in this situation. I (do not) anticipate returning to work.

Attorney B has custody of your file and will need to meet with you to review how to proceed with this matter. If you choose to retain new counsel to handle this matter, please advise accordingly.

I will look forward to hearing from you so your legal rights may be fully protected.

Very truly yours,

A
Attorney at Law

cc: B

PART II
LAWYER RETIREMENT

RETIREMENT - SOLO OR SMALL FIRM PRACTITIONER

The retirement of a solo practitioner or attorney in a small firm is a significant event for the retiring attorney, his or her clients, the profession, the courts and the public. The recent enactment of the Ohio Rules of Professional Conduct did not significantly change the Rules that govern the responsibilities of a retiring solo practitioner or small firm attorney from those found in the prior Code of Professional Responsibility. Due to the professional nature of the practice of law and the fiduciary relationship between attorneys and clients, the policies embodied in the Ohio Rules of Professional Conduct echo those of the prior code: to take all reasonable steps to protect client interests, to maintain client confidentiality and to provide adequate notice to clients. The purpose is to minimize the effect on the client and provide the opportunity for clients to seek new representation should they choose to do so. The Ohio Rules of Professional Conduct also require notice to affected courts and parties that the retiring attorney is no longer representing the client. In other words, the special nature of the practice of law requires the retiring attorney to take additional steps to ensure that his or her retirement has the least possible impact upon his clients' interests.

A useful source of information on the subject of retirement is the American Bar Association's Lawyer's Guide to Buying, Selling, Closing, and Merging a Law Practice. This publication can be purchased through the ABA and is available at www.abanet.org (under the Member Resources tab you should select Professional Development; then scroll down to Professional Development and select Sections, Divisions and Forums; scroll down to Divisions and select Senior Lawyers Division; scroll down to Partnerships and the article). This resource

provides practical advice on an attorney's responsibilities related to closing a law practice, ethical aspects of winding down a law practice, tips on file preservation, ending client and attorney relationships, and other helpful information. Furthermore, this publication provides checklists, sample agreements, forms, and letters useful to the retiring attorney.

Retiring attorneys must follow state rules governing attorney withdrawal from employment and/or termination of representation. After 2007, ethical issues confronting attorneys such as this are governed by the Ohio Rules of Professional Conduct. The former rule DR2-110(A) has been replaced by Ohio Rules of Professional Conduct, Rule 1.16, which addresses declining or terminating representation. Similar to the rule it replaced, Rule 1.16 requires the attorney to take steps, "to the extent reasonably practicable, to protect a client's interest." Protecting a client's interest includes giving sufficient notice to the client to allow a reasonable time for employment of other counsel and promptly delivering to the client all papers and property to which the client is entitled. Additionally, per Rule 1.16(c), an attorney who terminates representation must seek permission from a court or tribunal if that forum's rules necessitate such permission.

The burden of maintaining confidentiality of information related to the representation of a client is contained in Rule 1.6, which states that "[a] lawyer shall not reveal information relating to the representation of a client . . . unless the client gives informed consent . . ." The burden of confidentiality is passed on to any successor attorney in case of transfer of the law firm by Rule 1.17.

Another consideration for the retiring attorney is whether existing clients are due a refund of fees. Rule 1.16 requires the refund of unearned fees advanced to the attorney upon

termination of representation, unless the termination of representation is due to a “sale” of the attorney’s practice pursuant to Rule 1.17. An attorney contemplating retirement must ensure that representation is complete or account for all time spent on open files and refund any unearned fees during retirement planning.

Should the retiring attorney choose to sell the practice, the sale must be executed in accordance with the requirements of Rule 1.17. The enactment of Rule 1.17 is a significant difference from the previous rules, which generally frowned on the transfer of a law practice. This section sets forth specific requirements for a proposed sale, including delivery and content requirements for notice of the proposed sale, a requirement that the practice must be sold in its entirety, and limitations on non-compete agreements connected to the sale. The sale of a law practice is dealt with in much greater detail in Part IV of this Manual; refer to that section for more information regarding the sale of a law firm.

It should be noted that a failure to follow the Ohio Rules of Professional Conduct related to retirement issues brings about discipline and a potentially embarrassing situation. In Dayton Bar Assc. v. Wiechel, 62 Ohio St. 3d 227 (1991), the court reprimanded an attorney in retirement due to his failure to advise a client what the statute of limitations was for a claim. While this matter involved application of the prior Code, Rule 1.16 of the Ohio Rules of Professional Conduct would produce a similar result.

The ABA’s Lawyer’s Guide to Buying, Selling, Closing and Merging a Law Practice referenced above discusses additional issues that need to be addressed in closing a law practice. Importantly, there may be significant tax consequences as it relates to a partner’s interest in a law partnership. I.R.C. § 736 deals with the liquidation of a partnership or partnership interest by

retirement. There may also be self-employment tax and passive activity loss tax implications that should be considered. In addition, this reference includes a checklist of considerations that should be addressed when closing a practice. The checklist includes the following:

1. occupancy of leased office space;
2. tracking down insurance (disability, malpractice and tail policies);
3. computers and electronic information (back up disks and tapes);
4. client lists (active and closed files, destruction of files);
5. disposal of office furnishings and books;
6. trust accounts (should be frozen, consideration of distributions to clients);
7. notices and mail forwarded (to clients, courts and postal offices); and
8. files and accounts (review retention policy);

Accordingly, under the new Ohio Rules of Professional Conduct, the ethical focus of a retiring attorney remains mitigation of the potential damage to clients that the attorney's decision to retire might cause. There is continuing duty of service to the client until the matters are resolved or representation has been transferred to new counsel. Further there is a duty to maintain the confidentiality of information entrusted to the attorney during representations. Adequate notice provisions coupled with the requirement to promptly return necessary documents to the client ensure that the client is in the best possible position to find and retain new counsel should they elect to do so. To ensure a smooth transition, the retiring attorney should consult this manual as well as the materials it references prior to retirement from the practice of law.

PART III
LAWYER DEATH

DEATH – SOLO OR SMALL FIRM PRACTITIONER

Like it or not, death is inevitable, even for lawyers. Dealing with a lawyer's death is more difficult if that lawyer is a solo practitioner, at least for that lawyer's clients, and his or her estate. Where the lawyer has practiced in a firm setting, there are other lawyers in the office who can tend to the deceased lawyer's clients, and presumably, contractual provisions will govern the financial arrangements surrounding the winding up of the practice. These arrangements are generally not present for the solo practitioner. It, therefore, is up to each solo practitioner to make arrangements upon the ultimate occurrence of his or her death.

The need for a solo practitioner to make arrangements for the disposition of his or her practice is both a practical necessity and an ethical duty. The practical aspect impacts upon the value received by the deceased attorney's estate upon the winding up and disposition of the practice. The ethical duty is recognized in the Ohio Rules of Professional Conduct.

It is, therefore, appropriate for the Cleveland Metropolitan Bar Association to have in place a procedure to guide the sole practitioner. The Rules of Professional Conduct must be analyzed in drafting a rule for guidance in handling the estate of a deceased attorney. Rule 1.6 provides that a lawyer shall not reveal information relating to the representation of a client. Rule 1.9 provides for an attorney's duties to former clients. Rule 1.15 provides for safekeeping funds and property of clients, and Rule 1.16 deals with terminating representation.

In essence, the proposed procedure provides that the estate of a deceased lawyer may sell, and a lawyer or a firm may buy, a law practice. The seller must have ceased the private practice of law, the practice must be sold in its entirety (except for matters that create a conflict of interest), a notice must be given to the client, and the fees charged to the client must not increase

because of the sale. Neither the seller nor the buyer may seek a “hold harmless” agreement from the client, but the parties may agree to a “hold harmless” agreement between themselves. Of course, the seller and buyer must act within the bounds of the Attorney’s Oath, the Rules of Professional Conduct, and the Rules for the Government of the Bar.

Most of these requirements are fairly easily satisfied. A deceased lawyer is in no position to practice. It is not difficult for the purchaser to give notice to each client that the proposed sale is taking place, the terms of any proposed change in fee arrangement, the client’s right to retain other counsel or to take possession of the file, and that consent will be presumed if the client does not respond within 90 days.

The condition that a practice be sold in its entirety may be slightly problematic. A situation could arise where the purchaser may feel competent to handle most files of the seller, but not all. For example, the deceased lawyer may have been a general practitioner who engages in domestic relations, personal injury, and criminal defense work, with the criminal work comprising 10% of the practice. What if the potential purchaser is willing and believes him or herself competent to handle the personal injury and domestic files, but not the criminal matters? Under the proposed rule, a deceased lawyer would not sell the civil side of the practice to Attorney A, and the criminal side to Attorney B, if A and B were not associated, nor could A acquire the entire practice and resell the criminal side to B under the rule.

As noted above, there is an obligation or at least a consideration to arrange for the disposition of the files. Absent additional guidance, one may determine that upon death, it is in the client’s best interest to have another lawyer examine a client’s file, notify the client of the lawyer’s death, and take any necessary action to avoid prejudice to the client. If this course of

action is taken, the assuming lawyer ought to notify the client as to how the client's file may be obtained without obligation, that the lawyer is available to service the client, and that the client should contact the lawyer either to make arrangements for the transfer of the file to other counsel selected by the client or to retain the assuming lawyer.

While most attorneys are willing to help out another attorney from time to time without the thought of compensation, the wind-up and disposition of a practice is a time-consuming process. Every open file must be reviewed and courses of action determined, each client must be contacted, and arrangements must be made for the disposition of each file. An attorney who has been in practice for 30 or 40 years may have thousands of files which must be considered. Few lawyers, if any, would be willing to take on a task of this magnitude without compensation.

The Joint Committee on Aging Lawyers, appointed in August of 2005 by the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers, recommends that each jurisdiction develop local response teams of trained lawyers prepared to act when a lawyer dies without adequate succession planning.

A law practice is a valuable asset upon which the heirs of a deceased lawyer may be dependent. There is value in the tangible assets and value in accounts receivable and unbilled work in process. There also may be value in the goodwill of the practice, i.e., the ability to generate more business as a result of former relationships and reputation. Rule 1.17 allows for the sale of a law practice, including the good will of a practice, in its entirety.

Upon the death of a lawyer, compensation ought to flow to those who are helping in the disposition of the practice, and a value of the practice ought to be realized by the heirs. Unfortunately, realization of the full value of a practice may be difficult to determine.

The tangible assets of a practice may be sold upon the death of a lawyer. Assuming a buyer can be found, there is no problem with selling office furniture, books and equipment. Care must be taken, however, that a client's confidence and secrets are not inadvertently disclosed. Office equipment may include computers in which a client's confidences and secrets may be stored. Computer hard drives should be securely erased. While care must be exercised in the disposition of the equipment, such assets may be sold without concern.

The deceased lawyer may have some accounts receivable. If they are collected by another lawyer assisting the deceased lawyer's estate, the assisting lawyer can be compensated for his or her assistance. The compensation is payment for services rendered rather than a fee splitting arrangement proscribed by the Rules of Professional Conduct. A payment from the estate of a deceased lawyer to an assisting lawyer would be no different from payment by a lawyer to his bookkeeper who duns clients, or who turns accounts over to a service for collection. See, e.g., Bd. of Commrs. on Grievances & Discipline Op. 91-016 (6/14/91). Whether turning client accounts over for collection is a wise idea is another matter not considered here.

An assisting lawyer, who undertakes to complete representation for a deceased lawyer, may bill the deceased lawyer's work in progress and remit the amounts collected to the deceased lawyer's estate.

Rule 1.5(c) provides for division of fees between lawyers who are not in the same firm and should be followed in dealing with fees due to a deceased lawyer's estate. Client lists and files are a major source of the goodwill of a practice and a major component of the value of the going concern of the practice.

Thus, a deceased lawyer's estate may sell the tangible assets of a practice; may enter into an arrangement with another practitioner to provide continued representation for a client (with that client's consent); and may share the revenues generated, based upon the deceased lawyer's prior work on the file, and have that lawyer collect the receivables of the deceased lawyer. It is up to each attorney to consider whether an arrangement whereby the assuming attorney agrees to undertake the winding-up of the deceased attorney's practice, and to collect and remit accounts receivable and work in progress without further compensation, would be a violation of Rule 1.5(c).

The following are suggestions for steps to take in planning for the inevitable:

1. Each attorney should enter into an agreement for the disposition of his or her practice. The attorney knows the practice and understands the issues better than his or her personal representative will. Between the emotional pain of the attorney's death and the lack of knowledge of the deceased lawyer's practice, the personal representative may not be in a position to enter into the most beneficial arrangement for the estate and the clients. Most attorneys know another attorney who has a similar practice and would be comfortable with that attorney taking care of his or her clients in the event of death. It may be that two (2) or more attorneys will want to enter into a reciprocal agreement. If an agreement is reached, it should be reduced to writing.
2. The attorney should make sure that the existence of an agreement is known to the attorney's spouse or next-of-kin, personal representative, and staff, and where a copy of such agreement can be located when needed.

3. The attorney should make it as easy as possible for the assuming attorney to step in and fulfill his or her duties. A good idea would be to consider putting together an office “operations manual” or at least a letter to one’s successor so he or she will be able to do the following tasks:

a. Identify clients. This task will be very important so that the successor may make a conflicts check before taking any action that might violate a client’s confidence or secret. There should be instructions on how to access the client database (whether computerized or manual). This step is critical for those practitioners who operate without staff, a practice which is becoming more common. The ability to generate a mailing list would be extremely helpful.

b. Understand the files. The successor will need to know where the files are physically located, both active and inactive. How are the files filed - alphabetically or by number? If by number, how do the numbers relate to clients? Are there any files that are not kept with the rest of the files for some reason? If so, where are they located? Are wills kept in a safe deposit box? What bank and where is the key?

This exercise in organization may provide an incentive for each attorney to adopt (and execute) a file retention policy. Should the successor need to deal with the first file ever handled 40 years ago? Does one really need the file for that matter? Why pay for the file storage? File culling and destruction should be done on an annual basis.

c. Determine what needs to be done. The attorney should leave instructions for one's tickler system. A task sheet in each file stating what needs to be done and when would be helpful for one's successor in determining what needs to be done after an attorney's death.

d. Understand the finances of the practice. What financial accounts are maintained? Where are the main operating account, payroll account, and IOLTA accounts? Where are the attorney's personal checking and savings accounts, either for the practice or special escrow accounts on behalf of clients? Who has signature authority over those accounts? Getting immediate signature authority to one's successor may be difficult for the sole proprietor. If the practice is an entity (corporation or LLC), the designated successor may sign signature cards and escrow them with the attorney's personal representative. A signature card over accounts, where immediate access must be had (i.e. IOLTA account), could be escrowed with an attorney's personal representative, perhaps with reliance upon § 5731.39(B) of the Ohio Revised Code which allows the release of up to three-quarters of an account without a tax release.

Make sure the successor and the personal representative understand how to access the financial books and records of the practice. They will need to be able to find the accounts receivable and reports of work in progress. They cannot collect them if they do not know what they are. Also make sure there are accurate and accessible records of the funds in the IOLTA account. The successor will not only need to know how much money is in the account, but to whom it belongs

and for what purpose. Rule 1.15 provides for maintaining records regarding client balances in the IOLTA account.

4. Non-Practice Matters. An attorney should also make sure that the rest of his or her affairs are in order in the event of death. It is important that one's spouse or next-of-kin knows the location of insurance policies; a listing of assets, their location, liabilities and creditors; and other relevant items.

While death is something no one would rather deal with, it is something everyone faces. Putting one's house in order now, and revisiting the issue regularly, is important. One is ethically obligated to do so for the benefit of clients, and clearly ought to do so for the benefit of one's family.

FROM DESIGNEE TO CLIENT - DEATH

B
Attorney at Law
Address
Phone

(date)

Client Name
Address

Re: A

Dear Client:

Please be advised of the death of A. As you may know, Attorney A made arrangements with me to assist his (her) clients in the event of his (her) death.

At this time, I have custody/anticipate taking custody of his (her) files and wills. I will need your directions as to what you want done with your file/will. Each client has the option to choose his or her own new counsel to complete pending legal matters. It is important that I hear from you as soon as possible, as it may be necessary to meet deadlines in your pending matters.

If your matter is concluded, I will still need to know your instructions regarding the disposition of your file and any funds on retainer.

Please contact me to discuss these matters and any questions you may have.

Very truly yours,

B
Attorney at Law

**FROM DESIGNEE TO BANK HOLDING TRUST AND OPERATING ACCOUNTS-
DEATH**

B
Attorney at Law
Address
Phone

(date)

Bank Name
Address

Re: Attorney A

Dear _____:

Please be advised that Attorney A, a sole practitioner, died on (date). Attorney A made arrangements with me to assist his (her) clients in the event of his (her) death, as is shown in the enclosed agreement. Also enclosed is evidence of A's death.

It will be necessary for me to pay the expenses of A's practice and to receive, disburse, and account for client funds. If necessary, I will be obtaining, in cooperation with A's representatives, court authorization to deposit, account for and disburse funds on deposit with your bank. In the interim, I will appreciate your cooperation in providing information which may be necessary to conclude A's practice.

If there are any questions, please advise.

Very truly yours,

B
Attorney at Law

Encl.

cc: A's spouse or next-of-kin
Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust, if any

FROM DESIGNEE TO MALPRACTICE INSURER - DEATH

B
Attorney at Law
Address
Phone

(date)

Insurance Company
Address

Re: Attorney A

Dear _____:

Please be advised that Attorney A, a sole practitioner, has passed on. Attorney A made arrangements with me to assist his (her) clients in the event of his (her) death, as is shown in the enclosed agreement.

At this time, I have custody of his (her) files and wills. I will seek to reach each client for directions. If your firm is able to provide any assistance, or if you need additional information, please advise.

Very truly yours,

B
Attorney at Law

Encl.

cc: A's spouse or next-of-kin
Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust, if any

**FROM DESIGNEE TO DECEASED ATTORNEY'S SPOUSE OR NEXT-OF-KIN -
DEATH**

B
Attorney at Law
Address
Phone

(date)

A's Spouse or next-of-kin
Address

Re: Attorney A

Dear _____:

Please accept my condolences on the death of your husband/wife/father/mother. As you know, Attorney A made arrangements with me to assist his (her) clients in the event of his (her) death.

ALTERNATE 1:

At this time, I have custody of his (her) files and wills. I will seek to reach each client for directions. Each client has the option to choose new counsel to complete any pending legal matters.

ALTERNATE 2:

At this time, I will need immediate access to Attorney A's office to take custody of his (her) files and wills, so I can seek to reach each client for directions. Each client has the option to choose new counsel to complete the legal matter. Time is of the essence, as there may be important deadlines in certain cases, and, of course, each current client will certainly want to make certain that continued representation will be available.

As to closed files, I will need to make arrangements to return them to the clients if possible. In other cases, permanent storage may be necessary.

Page 2

When you are able, please contact me to discuss these matters and any questions you may have concerning the practice.

Very truly yours,

B
Attorney at Law

cc: Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust, if any

FROM DESIGNEE TO JUDGE AND CLERK OF COURTS - DEATH

B
Attorney at Law
Address
Phone

(date)

The Honorable _____ (each judge before whom A practiced)
Address

AND

Clerk of Courts (counties where A practiced)
Address

Re: Attorney A

Dear Judge _____: OR Dear Sir/Madam:

As you may know, Attorney A died on (date). Attorney A made arrangements with me to assist his (her) clients in the event of his (her) death. Under A's agreement with me, I will be working with his (her) representatives and clients toward an orderly termination of his (her) practice. I will also be managing his (her) business operations during this process. Please direct all communications concerning Attorney A's practice to my attention at the above address.

I am reviewing Attorney A's files to determine any pressing matters and am attempting to reach his (her) clients to give them the opportunity to select alternate counsel. Meanwhile, I do hope that you will grant forbearance to A's clients, as to any deadlines affecting their cases. As soon as I am able to do so, I will advise you of any cases which are pending in your Court.

Please contact me if you have any comments or questions.

Very truly yours,

B
Attorney at Law

cc: A's spouse or next-of-kin
Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust, if any

FROM DESIGNEE TO LESSORS, VENDORS, ETC. - DEATH

B
Attorney at Law
Address
Phone

(date)

Lessor's name
Address

Re: A

Dear Mr./Ms. _____:

As you may know, Attorney A died on (date). Attorney A made arrangements with me to assist his (her) clients and to arrange the orderly termination of his (her) practice. Please direct your billing and other communications concerning Attorney A's practice to my attention at the above address. Every effort will be made to honor all of Attorney A's just commitments.

Please contact me by mail concerning these matters and any other questions you may have. If there are any urgent matters requiring attention, please call me at the above number.

Very truly yours,

B
Attorney at Law

cc: A's spouse or next-of-kin
Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust

FROM DESIGNEE TO STAFF - DEATH

B
Attorney at Law
Address
Phone

(date)

Employee's name
Address

Re: A

Dear _____:

I was very sorry to learn of A's death. As you may know, Attorney A had made arrangements with me to assist his (her) clients in the event of his (her) death.

It will be necessary for me to pay the outstanding obligations of Mr./Ms. A's practice and receive, disburse and account for client funds.

The agreement also gives me the power to sign checks on Attorney A's operating accounts.

ALTERNATE 1:

At this time, I have custody of Mr./Ms. A's files and wills. I will seek to reach each client for directions. Each client has the option to choose new counsel to complete any pending legal matters.

ALTERNATE 2:

I will need immediate access to Attorney A's office to take custody of his (her) files and wills. Time is of the essence, as there may be important deadlines in certain cases, and, of course, each current client will certainly want to be assured of continuing legal representation.

As to closed files, I will need to make arrangements to return them to the clients if possible. In other cases, permanent storage may be necessary.

Page 2

Your continued service to the practice would be appreciated. I am authorized to continue your salary for the present and hope to do so until such time as the practice is concluded. Please let me know that I can count on you at this time.

Please contact me to discuss these matters and any questions you may have concerning A's practice.

Very truly yours,

B
Attorney at Law

cc: Spouse or next-of-kin of A
Personal Representative of the Estate of A
Trustee of the A Revocable Living Trust, if any

PART IV

SALE OF A LAW PRACTICE

SALE OF A LAW PRACTICE

Rule 1.17 of the Ohio Rules of Professional Conduct provides that a lawyer or law firm may sell or purchase a law practice, including the good will of the practice. The following conditions apply:

- The law practice shall be sold in its entirety, except where a conflict of interest is present that prevents the transfer of representation of a client or class of clients.
- The sale or purchase of a law practice is not permitted where the purchasing lawyer is buying the practice for the sole or primary purpose of reselling the practice to another lawyer or law firm.
- The purchasing lawyer may be an individual or a law firm and the selling lawyer may be an individual, a law firm, the estate of a deceased lawyer, or the representatives of a disabled or disappeared lawyer.
- The purchasing lawyer must preserve information relating to the representation of the clients consistent with Rule 1.6, as if those clients were clients of the prospective purchasing lawyer.
- The purchasing lawyer must purchase the law practice with the intention of delivering legal services to clients of the selling lawyer.
- The sale agreement must provide that the purchasing lawyer will honor any fee agreements relative to ongoing legal representation.
- The purchasing lawyer may negotiate fees with clients of the selling lawyer for legal representation that is commenced after the date of sale.
- The sale agreement may reasonably limit the ability of the selling lawyer to reenter the practice of law unless the selling lawyer is entering academic, government, or public service or to serve as in-house counsel to a business.
- Written notice must be given to all clients and the clients' consent to the sale will be presumed if the client does not take action or otherwise object within 90 days of the receipt of the notice.
- The purchasing lawyer must provide this notice if the seller is the estate of a deceased lawyer or the representative of a disabled or disappeared lawyer.
- If written notice cannot be given to a particular client publication in a newspaper in the county of sale (or an adjoining county if no newspaper is published in the county of sale) can be given. The clients' consent is presumed upon completion of the publication.

- Neither the selling lawyer nor the purchasing lawyer shall attempt to exonerate the lawyer or limit liability to the former or prospective client for any malpractice or other professional negligence. Rule 1.8(h) relating to malpractice liability shall be incorporated into the sale agreement. The selling lawyer or the purchasing lawyer may agree to provide for indemnification or other contribution for claims of malpractice or other professional negligence.

Rule 1.17 should be followed explicitly when a law practice is sold. The language of Ohio's Rule 1.17 differs significantly from the ABA Model Rule although much of the substance is the same. However, unlike the ABA, Ohio does not permit the sale of only a portion of a law practice and Ohio does permit a missing client to be provided notice of the sale by publication.

BIBLIOGRAPHY

Mary Ann Altman & Robert I. Weil, 1 HOW TO MANAGE YOUR LAW OFFICE, Section 8.03 (*Death or Withdrawal*), 8.04 (*Disability*), 8.05 (*Retirement*) & 8.06 (*Expulsion*) (1997).

Mary Ann Altman & Robert I. Weil, 2 HOW TO MANAGE YOUR LAW OFFICE, Sections 6.1.1 (*Death of Partner*), 7.1.2 (*Termination of Disabled Partner's Interest*), 8 (*Termination of Partnership Interest by Retirement*), 9 (*Termination of Partnership Interest by Reason of Withdrawal*), 10 (*Termination of Partnership Interest by Expulsion for Cause*), 14 i 16.13 (*Transfer of a Law Practice*) & Appendix A (*Complete Partnership Agreement*) (1997).

Thomas G. Bousquet, *Retirement of a Sole Practitioner's Law Practice*, 28 LAW OFF ECON & MGMT 428-88 (1988-89).

Sabrina A. Butler & Richard G. Paszkiet, *Lawyer's Guide to Buying, Selling, Closing, and Merging a Law Practice*, ABA Senior Lawyers Division (2007).

Barbara S. Fishleder, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Death or Disability*, Oregon State Bar Professional Liability Fund (1999).

Garth C. Grissom, ABA THE LAWYERS HANDBOOK, D8-1-17 (1982).

Donald G. Kalfen, *Life After Law Practice*, 11 THE COMPLETE LAWYER 43-47 (Win 1994).

Cameron K. Wehringer, *Preparing Client Files for the Lawyer's Death or Disability (with Forms)* 31 PRACTICAL LAWYER 87-91 (1985).

OTHER RESOURCES

Ohio Rules of Professional Conduct

<http://www.sconet.state.oh.us/LegalResources/Rules/ProfConduct/profConductRules.pdf>

Rules for the Government of the Bar in Ohio

<http://www.sconet.state.oh.us/LegalResources/Rules/govbar/govbar.pdf>

Board of Commissioners on Grievances and Discipline Advisory Opinions

http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/default.asp

Final Report of the Joint Committee on Aging Lawyers, May 2007

<http://www.aprl.net/pdf/NOBC-APRL.pdf>