NORTH CAROLINA STATE BAR SAMPLE LETTER TO TRUSTEE

(Sample | Modify as appropriate)

**CONTEXT**

If you have not arranged for an Assisting Attorney to step in and close your practice in the event of your death, disability or disappearance, hopefully with your client’s informed consent due to the confidentiality issues, there is a process by which the North Carolina State Bar will step in and help accomplish the task. Our hope is that with the proper advance planning, this will be the procedure of last resort.

**VIA U.S. Mail**

[*Trustee Name*] [*Address*]

Re: Trustee of [*Attorney Name*] Law Practice Dear [*Mr./Ms.*] [*Trustee Name*]:

Please find enclosed for your review three copies of a draft petition and proposed orders seeking your appointment as Trustee for the law practice of [*Attorney Name*]. Also enclosed are a draft petition seeking your discharge as Trustee, a proposed order discharging you as Trustee, and a handbook prepared by the State Bar for use by law practice Trustees.

When you are satisfied with the content of the petition and order seeking your appointment, please file the petition in the [*County Name*] County Superior Court and present the proposed order to the Senior Resident Superior Court Judge for entry. Return a file stamped copy of the petition and order to me in the enclosed, self-addressed envelope, for the State Bar’s records.

As we have discussed in our recent telephone conversations, the first task of the Trustee is to determine what active client matters need immediate attention and to contact those clients to inform them of the need to retain new counsel. As Trustee, you are not expected to serve as counsel for [*Attorney Name*]’s clients, although you may do so if you wish and the clients consent. Depending upon the urgency of the pending legal matters, you may need to contact some clients by telephone and/or seek a continuance of scheduled court hearings and the like.

You may consider notifying the clerks of court where lawsuits are pending to seek additional assistance in seeing that special attention is given to scheduling matters in [*Mr./Ms.*] [*Attorney Last Name*]’s ongoing cases, to the extent that [*Mr./Ms.*] [*Attorney Last Name*] was scheduled to make court appearances for clients and to the extent that he/she was required to make filings for any estates. For non-emergency cases, we recommend contacting clients by form letter to notify them of [*Mr./Ms*.] [*Attorney Last Name*]’s death and their need to retain new counsel. There are some sample letters in the handbook.

In the event that you decide not to keep [*Mr./Ms.*] [*Attorney Last Name*]’s office staffed and open full-time, you may consider scheduling blocks of time for [*Mr./Ms.*] [*Attorney Last Name*]’s clients to pick up their files. Regardless, you should make an inventory of all files and should keep track of which clients pick up their files. Before turning over

client files, you may wish to obtain and photocopy appropriate forms of picture identification. We suggest that you have clients sign an acknowledgment of receipt of their files. Samples of such acknowledgments are in the trustee handbook. In order to be discharged as Trustee when your duties are completed, you will have to submit to the court a list of all client files, a list of those files picked up by clients and a list of all client files not picked up. Please keep this in mind when organizing the inventory of files and client receipts. It may be useful at this point for you to review the enclosed draft petition seeking your discharge as Trustee and the proposed order so that you will be familiar with what is required to complete your duties as Trustee.

To the extent that [*Mr./Ms.*] [*Attorney Last Name*] maintained inactive client files at [*his/her*] office, a reasonable effort should be made to inventory those files and to contact clients to offer them a chance to pick up their files before the files are destroyed by order of the Court. See RPC 16 and RPC 209 for some guidance on your responsibilities with respect to inactive (or closed) client files. Copies of these ethics opinions are enclosed

for your convenience. Some Trustees choose to limit their inventory of closed files to those files in which the representation was concluded within the last six (6) years, which is the required minimum for retaining closed files pursuant to RPC 209. Some Trustees choose a longer period, such as ten (10) years, because the statute of limitations may require that a particular file be retained for longer than six (6) years. Regardless, you should seek direction and approval of the court that appoints you in formulating a plan for disposal of [*Mr./Ms.*] [*Attorney Last Name*]’s files. What actions constitute reasonable attempts to contact the clients before destroying closed files will depend on the number of closed files as well as other circumstances. You should seek the court’s instructions if you are uncertain as to exactly what steps ought to be taken in order to contact the clients before disposing of files. You should not dispose of client files without an order of the court authorizing you to so do.

In addition to immediately contacting clients with pending matters, you should promptly secure [*Mr./Ms.*] [*Attorney Last Name*]’s trust and/or fiduciary accounts by notifying the financial institutions where such accounts are maintained that [*Mr./Ms*.] [*Attorney Last Name*] has died. It may be necessary for you to execute new directives concerning signatory authority for the accounts. You should also promptly obtain the account records in order

to identify the ownership of any funds in such accounts, so that the clients/ beneficiaries may be reimbursed, or their funds forwarded as they may direct. The enclosed Order authorizes you to secure the accounts and obtain records from the bank(s), to the extent that trust account records are not on file in [*Mr./Ms.*] [*Attorney Last Name*]’s office. If you need help in obtaining the records and funds or preparing an accounting, please let me know.

Although the order appointing you as Trustee gives you the general authority to disburse funds from the trust and/ or fiduciary accounts, it is probably wise to get another order specifically authorizing disbursement once you have determined what funds are to be disbursed and to whom. You will, of course, be required to account to the court for all funds and disbursements.

When you complete your duties, the last step in the process is to apply to the court for discharge. I have enclosed a draft petition seeking your discharge as Trustee. Please contact me for assistance in finalizing this pleading when the time comes. Again, it would be helpful for you to review the draft order at this time so that you are more familiar with what the court may require in order to discharge you upon completion of your duties.

You should keep track of your time and expenses incurred in winding down [*Mr./Ms.*] [*Attorney Last Name*]’s practice. You should also keep track of the time spent by your clerical staff. The court can award payment of counsel fees to a Trustee in the event of death; such fees may be paid as administrative expenses of the estate.

N.C. Gen. Stat. 84-280. It is probably a good idea to seek interim orders of the court providing for payment of your fees and expenses as incurred if you desire to be promptly compensated by the Estate. Let me know if you need

assistance in drafting a notice of hearing and petition seeking payment of your interim fees and expenses. You should present summaries of your services and expenses, along with any such interim or final orders authorizing payment of your fees, to the personal representative of the Estate and to the clerk of court in order to put the estate on notice of your claim.

[*In the event of disability/disbarment/abandonment:*

*In the event that <Mr./Ms.> <Attorney Last Name> is unable to pay your fees, the State Bar would be in a position to pay you a modest fee in compensation for your time. As you proceed with the trusteeship of <Mr./ Ms.>*

*<Attorney Last Name>’s practice, please send me periodic statements reporting your time and expenses incurred so that I may advise the State Bar’s Executive Director, Alice Neece.* In any order discharging you as Trustee, it is important that the court set the fee to be paid to you for your services as Trustee.]

[*In the event of death:*

*I am certain that you will have a number of questions about how to handle the closure of <Mr./Ms.> <Attorney Last Name>’s law practice. Call me or any of the other staff attorneys here at the N.C. State Bar if you need help or advice. Again, thank you for undertaking this very important service to the profession, the public, and <Mr./ Ms.>*

*<Attorney Last Name>’s family.*]

With kind regards, I am Very truly yours,

Deputy Counsel

Enclosures