



**PLANNING FOR THE
NEXT STAGE OF
YOUR LAW PRACTICE**

**NORTH CAROLINA
BAR ASSOCIATION**
seeking liberty + justice



Produced by the North Carolina Bar Association
Professional Vitality Committee with a grant from
the North Carolina Bar Foundation

NORTH CAROLINA

BAR ASSOCIATION
seeking liberty + justice

The Professional Vitality Committee of the North Carolina Bar Association creates sourced articles centered on reducing inherent stress and enhancing vitality in the lives of legal professionals. It offers those published resources, including this booklet, as a benefit for members of the Association.

North Carolina Bar Association (NCBA) publications are intended to provide current and accurate information and are designed to assist in maintaining professional competence. Nonetheless, all original sources of authority presented in NCBA publications should be independently researched in dealing with any client's or your own specific legal matters.

Information provided in NCBA publications is for informational purposes only; nothing in this publication constitutes the provision of legal advice or services, or tax advice or services, and no attorney-client relationship is formed. Publications are distributed with the understanding that neither the NCBA nor any of its authors or employees render any legal, accounting or other professional services.

The views and opinions expressed are those of the individuals and do not necessarily represent official policy, position or views of the NCBA.

This booklet was written in part and reviewed as a portion of the work of the NCBA Professional Vitality Committee (PVC). Please direct comments and suggestions to the PVC Chair and the NCBA Communities Manager. See more of the PVC's compendium of articles and blog posts at <https://www.ncbar.org/members/communities/committees/professional-vitality-committee/>.

Copyright © 2021 North Carolina Bar Association.

ALL RIGHTS RESERVED. Permission is hereby granted for the limited copying of pages or portions of pages of this book by or under the direction of licensed attorneys for use in the practice of law. No other use is permitted without the express written consent of the NCBA.

TABLE OF CONTENTS

FOREWORD – Retire? Reset? Reinvent? Planning for the Next Stage of Your Law Practice	6
PART I. Checklists, Suggestions & Other Resources	8
Initial Checklist for Protecting Clients’ Interests and Closing a Law Office in an Orderly Manner	10
Checklist for Closing Your Law Office	12
Checklist for Selling a Law Practice	15
Checklist for Transitioning Leadership in a Law Firm	20
Suggestions in Planning for a Sabbatical/Extended Absence	22
Financial Planning Suggestions for Closing a Law Practice or “Show Me the Money”	23
Are You Prepared for the Future?	24
How Prepared Is Your Practice?	25
Law Office List of Contacts	26
Other Resources	32
PART II. Inactive-Retired Status with the North Carolina State Bar	34
Applicable North Carolina State Bar Rule	36
Instructions for Petitioners for Inactive Status	38
Petition for Transfer to Inactive Status	40
PART III. Designation of Assisting Attorney	42
Agreement Between Planning Attorney and Assisting Attorney to Close Law Practice	44
Will Provisions	49
Notice to Professional Liability Insurance Carrier of Designated Assisting Attorney	50
Conditional Durable Power of Attorney	51
Specimen Signature of Attorney-in-Fact	52
Letter of Understanding for Delivery of Power of Attorney	53
PART IV. Protecting Your Clients’ Interests in Your Absence	54
Client Engagement Letter Notifying Client of Assisting Attorney	56
Engagement Letter and Fee Agreement Follow-Up Letter to Initial Interview	58
Contingent Fee Agreement	60
Explanation of Contingent Fee Agreement	62
Letter Advising Clients That Lawyer is Closing His/Her Office	63

Letter Advising Clients That Lawyer is Taking a Temporary Leave of Absence	65
Letter Advising Clients That Lawyer is Unable to Continue Practicing Law	66
Letter from Exiting Lawyer’s Firm to Clients Offering to Continue Representation	67
Office Closure File Tracking Chart	68
Client’s Request for File	69
Client’s Authorization for Transfer of Client File	70
Client’s Acknowledgment of Receipt of File	71
PART V. Appointment of Trustee When No Assisting Attorney Has Been Arranged	72
Applicable North Carolina State Bar Rule	74
North Carolina State Bar Sample Letter to Trustee	75
Verified Petition for Order Appointing Trustee of Deceased Attorney’s Law Practice	78
Order Appointing Trustee of Deceased Attorney’s Law Practice	81
Petition for Order Discharging Trustee of Deceased Attorney’s Law Practice	84
Order Discharging Trustee	86
Notice of Hearing	89
Part VI. The “Of Counsel” Relationship, and Other Ways to Reset, Reinvent, and Stay Engaged!	90
“Of Counsel”: Considerations and Agreements	92
Other Ways to Reset, Reinvent, and Stay Engaged!	96
Part VII. Attorney Perspectives – Yesterday, Today, and Tomorrow	98
A Note To My Younger Self – Coleman Cowan	100
Where Am I And Where Am I Going? – Celia Pistolis	102
What Is Your Blue Chair? – Mark Scruggs	104
APPENDIX – Selected Rules & Ethics Opinions	105
Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer	107
Rule 1.5 – Fees	108
Rule 1.6 – Confidentiality of Information	110
Rule 1.7 – Conflict of Interest Rules	111
Rule 1.8 – Conflict of Interest: Current Clients: Specific Rules	112
Rule 1.9 – Duties to Former Clients	114
Rule 1.10 – Imputation of Conflicts of Interest: General Rule	115
Rule 1.11 – Special Conflicts of Interest for Former and Current Government Officers and Employees	116
Rule 1.12 – Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral	118
Rule 1.15 – Safekeeping Property	119

Rule 1.16 – Declining or Terminating Representation	120
Rule 1.17 – Sale of A Law Practice	122
Rule 5.6 – Restrictions on Right to Practice	123
Rule 7.5 – Firm Names and Letterheads (reserved)	124
Files of A Deceased Lawyer	125
Fees for the Collection of “Med-Pay”	127
Disposing of Closed Client Files	128
Sale of A Law Firm to Lawyers Employed by the Firm	130
Guidelines for Fees Paid in Advance	132
Duty to Safekeep Client Files Upon Suspension, Disbarment, Disappearance, or Death of Firm Lawyer	139

FOREWORD: Retire? Reset? Reinvent?

Planning For the Next Stage of Your Law Practice

This publication, originally entitled “Turning Out The Lights, Planning for Closing Your Law Practice,” has grown considerably from its inception in 2003. Inspired by the untimely death of Charlotte attorney Rich Harris, it was initially designed to address planning for an attorney’s unexpected death or disability, as well as closing a practice. It has been expanded over the years to address a variety of related situations, such as the sale of a practice and firm leadership transition, as well as ethical and practical obligations.

The NCBA Professional Vitality Committee has taken the reins in this revised and renamed booklet. Changes have been made to update statutory references, forms, names, addresses, phone numbers and the like. A new section (Part VI), addressing the “of counsel” relationship, and other ways to “Reset, Reinvent, and Stay Engaged!” has been added. In addition to the various “nuts and bolts” provided in this excellent resource, the new Part VII includes perspectives from attorneys at various stages in their careers providing a bit of “food for thought” to nourish the professional’s soul. We are excited that the NCBA has agreed to offer this publication to all North Carolina legal professionals at no charge and in digital format with fillable forms.

This booklet contains suggested forms to assist a solo or small firm practitioner to prepare for an untimely death or disability. Most are couched in terms relating to death but would apply as well when an attorney becomes suddenly disabled or wishes to close a practice. (The forms use the terms “law office” and “law practice” interchangeably, except that the “law office” usually refers to the physical location and all office personnel, whereas “practice” refers more to work involving client relationships.) It also contains documents from the State Bar to assist the attorney designated as the Trustee in applying to the court for authorization to serve as Trustee. (At present, state law and Bar regulations only authorize the Trustee to deal with client files and trust funds. The planning forms are, therefore, voluntary.) The booklet refers to elements of computer based office practices including password access, social media and “cloud” storage as they should be considered in the sale or closing of a law practice. Attention is also directed to the NC State Bar “retired” category of “Inactive Member.”

Significant portions of these materials were adapted to North Carolina circumstances 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, with permission of the Oregon State Bar

Professional Liability Fund. Our thanks also to Alice Neece Mine at the North Carolina State Bar, to Tom Lenfestey of The Law Practice Exchange and to Lawyers Mutual for their contributions to this publication.

All rights are reserved except that licensed North Carolina attorneys may use this material for assistance with their own law practice or to help other attorneys.

Rich Harris Committee First Edition (2002–03)

Judge Gerald Arnold	William R. Stroud Jr.
Robert E. Campbell	Bobby D. White
Root Edmondson	Carolyn B. Winfrey
Larissa J. Erkman	Jane B. Weathers, Ex-Officio
E. William Kratt	Staff Liaison Kaye H. Summers, LAD Liaison
Robert H. Sapp	Malvern F. King Jr., Chair and Editor

Rich Harris Committee Second Edition (2011–12)

Jeff Connolly	Christine M. Ryan
Suzanne Lever	Mark Scruggs
Erik Mazzone	Jane Weathers

Transitioning Lawyers Commission Third Edition (2016–17)

Malinda Allen	Bill Rabil
Chris Burti	Mark Scruggs

Retire? Reset? Reinvent? Planning for the Next Stage of Your Law Practice (2021)

Professional Vitality Committee

Erna Womble – Chair (2019-2021)
Jamie Dean – Chair (2021-2022)

Retire? Reset? Reinvent? Editorial Board

Dottie Burch	Tom Lenfestey
Linsay Boyce	Michele Morris
Mark Brennan	Theresa Rosenberg
Jennifer Cone	Mark Scruggs
Jamie Dean	Leslee Sharp
George Evans	Bill Womble, Jr.

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART I.

CHECKLISTS, SUGGESTIONS & OTHER RESOURCES

Initial Checklist for Protecting Clients’ Interests and Closing a Law Office in an Orderly Manner	10
Checklist for Closing Your Law Office	12
Checklist for Selling a Law Practice	15
Checklist for Transitioning Leadership in a Law Office	20
Suggestions in Planning for a Sabbatical/Extended Absence	22
Financial Planning Suggestions for Closing a Law Practice or “Show Me the Money”	23
Are You Prepared for the Future?	24
How Prepared is Your Practice?	25
Law Office List of Contacts	26
Other Resources	32

Initial Checklist for Protecting Clients' Interests and Closing a Law Office in an Orderly Manner

CONTEXT

Any attorney engaged in the private practice of law has an additional responsibility to his/her clients, staff and family to ensure that a plan is in place for the orderly handling of the client's matter in the event of the lawyer's death or disability, including closing down the law practice, if necessary. This is particularly important in the case of a sole practitioner. See NC Rules of Professional Conduct 1.3, Comment [5]. This checklist contains the framework for the information that an attorney should collect in advance while actively practicing law. This type of information would be required of another attorney or a Trustee if he/she were needed to step in and manage the law practice closure.

1. Use retainer agreements with clients that state you have arranged for an attorney (the "Assisting Attorney") to close your practice in the event of death, disability, impairment, or incapacity. Include a statement of consent, authorizing the Assisting Attorney to contact the client if necessary.
2. Have a thorough and up-to-date office procedure manual that includes information on:
 - a. How to check for a conflict of interest.
 - b. How to use the calendaring system.
 - c. How to generate a list of active client files, including client names, addresses, and phone numbers.
 - d. Where client ledgers are kept.
 - e. How the open/active files are organized.
 - f. How the closed files are organized and how to access them.
 - g. The office policy on keeping original documents of clients.
 - h. Where original client documents are kept.
 - i. Where the safe deposit box is located and how to access it.
 - j. The bank name, address, account signers, and account numbers for all law office general and trust accounts.
 - k. The location of all law office bank account records (general and trust).
 - l. The location of all electronically stored firm and client records. Include where to find, or who knows about, the computer passwords for email, online storage and all other web-based systems.
 - m. How to access your voice mail (or answering service) and the access code numbers.
 - n. Where the post office or other mail service box is located and how to access it.

- o. How to access any online law practice identities, including Facebook, Twitter, LinkedIn, and other social media accounts.
- 3. Make sure you document all file deadlines (including follow-up deadlines) on your calendaring system.
- 4. Document your files.
- 5. Keep your time and billing records up to date.
- 6. Avoid keeping original documents of clients, such as wills and other estate planning documents. If you do have original documents, maintain them in a central place, indexed, within the office.
- 7. Have a written agreement with the Assisting Attorney who will close your practice that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney, or if you need to designate a personal attorney for yourself. Be sure to choose an Assisting Attorney who is sensitive to conflict of interest issues. Also consider the possibility of needing a third attorney to act as the Trust Account Signor.
- 8. If your written agreement authorizes the Assisting 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 Assisting Attorney will have to sign bank forms authorizing the Assisting Attorney to have access to your trust or general account. Choose your Assisting Attorney wisely as he or she may have access to your clients' funds.
- 9. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of staff and other office changes.
- 10. Introduce your Assisting Attorney to your office staff and make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney if an emergency occurs. If you practice without regular staff, make sure your Assisting Attorney knows whom to contact (the landlord, for example) to gain access to your office.
- 11. Inform your spouse or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact the Assisting Attorney.
- 12. Forward the contact information of your Assisting Attorney to Lawyers Mutual Liability Insurance Company or your professional liability insurance carrier each year. This will enable your professional liability insurance carrier to locate the Assisting Attorney in the event of your death, disability, impairment, or incapacity.
- 13. Renew your written agreement with your Assisting Attorney (and Trust Account Signor, if applicable) each year. If you include the name of your Assisting Attorney in your retainer agreement, make sure it is current.
- 14. Arrange for payment of your Assisting Attorney, Trust Account Signor, and support staff during the closing process. Consider purchasing (or having the firm purchase) an insurance policy to cover these costs.

Checklist for Closing Your Law Office

CONTEXT

This checklist is for the attorney who is voluntarily closing his/her law practice.

1. Finalize as many active files as possible.
2. 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 limitations and time frames important to their case. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this. (See Letter Advising That Lawyer is Closing His/her Office provided in this handbook.) If possible, refer the client to another attorney who may be able to handle the client's matter.
3. For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request extensions, continuances, and new hearing dates with notice to opposing counsel. Send written confirmations of these extensions, continuances, and new dates to opposing counsel and to your client.
4. For cases before administrative bodies and courts, obtain the clients' permission to submit a motion and order to withdraw as attorney of record. Review Rule 1.16 regarding assisting the client upon withdrawal.
5. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
6. Pick an appropriate date and check to verify that all cases have either a Motion and Order allowing your withdrawal as attorney of record, or a Substitution of Attorney filed with the Court.
7. Make copies of files for your clients. Retain your original files. All clients should either pick up their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. (See Acknowledgment of Receipt of File and Authorization provided in this handbook.) If a client is picking up the file, original documents should be returned to the client and copies should be kept in your file.
8. All clients should be informed in writing where their closed files will be stored and whom they should contact in order to retrieve them. Absent the client's consent to dispose of a file, a closed file must be maintained for a minimum of six years after the conclusion of the representation. (Note that some types of files must be retained for 10 years or longer due to statutes of limitation.) If a closed file is to be stored by another attorney, get the client's permission to allow the attorney to store the file and provide the client with the attorney's name, address, and phone number.
9. Provide the North Carolina State Bar with the name, address, and phone number of the person who will be retaining your closed files. Closed files must be stored in accordance with N.C. State Bar guidelines. RPC 209 provides guidelines for the disposal of stored client files.

10. If you are a solo practitioner, ask your phone service provider for a new phone number to be given out when your old phone number is called. Alternatively, consider having your office phone calls forwarded to either your home or to a lawyer who is assisting with the closure of your office. This will ensure clients receive the proper assistance if they attempt to contact you after you have closed your office.
11. Disburse funds held in your trust account to the appropriate clients with a final accounting. You can also deliver the funds to new legal counsel designated by the client. Close out your trust account. For questions, call the Trust Accounting Compliance Counsel at the North Carolina State Bar.
12. Call the N.C. State Bar Membership Section and update all your contact information and membership records.
13. If you wish to obtain “inactive” status, you must complete a petition to be placed on inactive status. These petitions can be found on the N.C. State Bar’s website. The petition must be completed and received no later than December 30 in order to avoid fees for the following year. All petitions for inactive status are heard at the State Bar’s quarterly meetings. If you have questions you may contact the Membership Department of the North Carolina State Bar. In 2014, the State Bar created a new subcategory of Inactive membership: Retired member. This subcategory includes those members who are retired from the practice of law and who no longer hold themselves out as practicing attorneys. A retired member must hold himself or herself out as a “Retired Member of the North Carolina State Bar” or by some similar designation, provided such designation clearly indicates that the attorney is “retired.”
14. Contact Lawyers Mutual or your professional liability insurance carrier about necessary continued malpractice coverage.
15. Terminate your lease. You will need to notify your landlord of your decision to move. You may need to negotiate early termination terms.
16. Arrange for termination of equipment leases and removal. If you lease copiers and printers, these leases will also have to be terminated. Most printers, scanners, copiers, etc. are essentially computers these days and therefore have confidential client data stored in memory. Be sure to wipe these computers clean of any confidential client data before returning them to the lessors, or if you own the equipment, before selling or donating the equipment.
17. Consider purchasing an Extended Reporting Endorsement (ERE). Contact your professional liability insurance carrier for an ERE to your existing malpractice policy. An ERE is commonly referred to as a “tail policy.” As the name implies, an ERE extends the period during which you may report a claim to your carrier. Discuss with your carrier the appropriate period of time for an ERE.
18. Accounting records. Retain your accounting records for IRS review, if necessary, to prove income, expenses, deductions, etc. Ask your CPA or accounting professional for advice concerning retention periods. Ethics Rule 1.15-3 provides guidance for records and accounting.
19. Contact Your Information Technology (IT) professional to inventory all office and personal equipment that may contain client sensitive information and to develop a decommissioning plan. Areas of concern that may need to be addressed with your IT professional include:
 - a. Professionally removing computer hard drives and safely packaging and storing them.
 - b. Giving sufficient notice to your internet service provider and your phone service provider.

- c. Protecting any check printing media.
- d. Retaining ownership of office's domain name to avoid impersonation.
- e. Turning off email services, as well as archiving, consolidating, and retaining existing email prior to cleaning them off the hard drive.
- f. Archiving security codes, passcodes, and usernames, particularly for encrypted devices.
- g. Archiving voice mail and erasing voice mail storage mechanism.
- h. Removing business account information from personal cell phone and clearing personal cell phone.
- i. Contacting equipment leasing companies that may store client information and insisting on a factory reset of the machines while on office premises with IT professional present.
- j. Contacting Professional Document Destruction Company regarding proper disposal (shredding) of Clients' Non-Public Personal Information and attorney's privileged information, as well as proper disposal by IT professional of any USB Drives and any "back- up" materials.

Checklist for Selling a Law Practice

Selling a law practice takes many different structures and paths based on your goals and the overall uniqueness of the firm, practice area(s), geographic location, client base and many others, but at the end of the day 'sale' is really about finding the next owner, leader and successor for you and your ownership of your law practice. This successor may be:

- An attorney you hire (or already is employed);
- An outside law firm who acquires your practice under an acquisition-merger structure;
- An outside attorney who purchases your ownership and joins your firm as the owner of the future;
- A law firm you join as partner or of counsel and then retire from down the road; or
- Numerous other potential successors for your practice ownership which could be your 'buyers'.

To make law firm sales successful they need to be transition-based exchanges where the selling attorney will stay on for a certain time after any transaction or agreement in order to transition clients, network, knowledge and all other elements of value to the buyer. That timeline is determined based on your desire, firm and client needs, and buyer needs to ensure a complete transfer of value and ease any change of control items over a well implemented and actionable plan after sale.

1. REVIEW YOUR ETHICAL RESPONSIBILITIES Visit <http://www.ncbar.gov/rules/>

- [N.C. Rules of Prof 'l Conduct Rule 1.17](#) (2003) (SALE OF LAW PRACTICE)
- [N.C. Rules of Prof 'l Conduct Rule 1.6](#) (2003)
- [N.C. Rules of Prof 'l Conduct Rule 1.15 et seq.](#) (2003)
- [N.C. Rules of Prof 'l Conduct Rule 1.7 – 1.12](#) (2003)
- [N.C. Rules of Prof 'l Conduct Rule 1.16](#) (2003)
- [N.C. Rules of Prof 'l Conduct Rule 5.6](#)
- [98 Formal Ethics Opinion 6](#)
- Others which may be applicable to transition structure
 - o [N.C. Rules of Prof 'l Conduct Rules 7.1 — 7.4 \(2021\) Information about Legal Services](#)

2. ESTABLISH YOUR TIMELINE:

If internal candidate when do you want to offer purchase of equity (the sooner the better)?:

Determine when to start your search for an outside hire or buyer (at least 3-5 years before is best):

How long will it take you to find an outside buyer (at least 1-2 years)?: _____

Determine how long it will take to transition clients, network, management, etc. to buyer? (at least 1-2 years post sale): _____

- Determine when you want to begin decreasing time commitment in the practice (6-12 months after sale):

- Determine when you want to be completely disengaged from the practice (2 years after sale min):

*Typically a selling attorney will continue to assist with the transition for at least 2 years after the sale.
During such transition a selling attorney can expect to be scaled down in hours until full exit.
Consult with financial advisors to determine appropriate timeline for full exit given financial and other retirement goals.*

3. ENGAGE YOUR TEAM OF PROFESSIONALS:

- Law firm management consultants;
- Law practice brokers;
- Accountants/CPAs;
- Financial Advisors;
- Valuation experts;
- Marketing consultants;
- Executive search consultants;
- Lawyers/closing attorneys;
- Transition consultants; and
- Lending sources.

4. CREATE A TRANSITION PLAN:

- Define your personal goals and desired outcomes: _____

YOUR OPTIONS:

Internal Sale	External Sale
a) Groom an associate to take over the practice	a) Sell to an outside attorney who can learn and take over client relationships
b) Hire and develop a mentor relationship with a younger lawyer who is not in your firm	b) Sale or merger type transaction with another law firm
c) Transfer practice and clients to other firm partners	c) Sell to a firm and join them as Of Counsel with financial earnout and retirement incentives
d) Stay on as Of Counsel with the firm and slow down over time	d) Join together under a transition timeline with an outside lawyer who will take on clients and cases over time
e) Sell to attorney who joins the firm upon sale as a new partner	e) Sell to a firm which desires specific geographic location where some work and resources will shift to main firm offices

- Develop sales plan – strategies, targets, etc.
- Create a plan of action to get your staff on board
- Obtain a valuation analysis
- Finalize preferred transaction terms

5. PREPARE YOUR LAW PRACTICE FOR SALE

ORGANIZATIONAL PREPARATION:

- Create and document your systems and processes.
- Create a database of former and current clients.
- Review closed physical files and dispose of files as appropriate and permissible under the Ethics Rules.
- Review and prioritize all open files with emphasis on time-sensitive issues.
- Document your key responsibilities and how you perform them.
- Create and maintain firm disaster recovery information.

FINANCIAL PREPARATION

- Prepare financial statements and have them reviewed by a professional
- Gather federal and state income tax returns for the past five years
- Gather Income Statements and Balance Sheets for the past five years
- Maintain up to date Income Statements and Balance Sheets for current year
- Collect fee schedules, if any, for the past five years
- Accounts receivable listing and current accounts receivable aging schedule
- Practice area by revenues breakdown
- Originations and production by attorney
- Ongoing case value
- Client origination source by revenue breakdown
- Notes payable, mortgages (Deeds of trust), etc.
- Leases in effect for the premises and all equipment
- Bank statements, cancelled checks, and bank reconciliations
- Work in progress schedule
- Data on key personnel of the firm who will assist in transition or remain with the firm.
- Insurance policies in effect
- Brochures, if any, about the firm
- Additional relevant documents

6. DETERMINE THE VALUE OF YOUR PRACTICE

It is important to have a benchmark of what your practice may be worth. You may need to determine your needs for retirement planning or it may just help in discussions with a potential successor, but having a justifiable value for your firm will help meet goals and to continue discussions forward. Seeking the opinion of a law firm transition professional to assist in valuation can prove helpful as the law firm specific nature of the transaction may have a significant impact on value. Consider seeking an opinion from a practice broker, a lender, or a CPA who has experience and specific knowledge of law practice sales and related valuations used.

Law firm organizational and financial structures can vary greatly, but with most law practices a common element is the value being attached to client or network relationships or goodwill, rather than hard assets. As such, pricing and payment structures are very important to maximize value, but the most important is the transition plan that will be agreed upon between a seller and buyer. A thoroughly developed transition plan which will be implemented post-closing can make the difference between a mild and wildly successful transaction for both parties.

***Please note**, if seeking external sale these items can also affect timeline to find a buyer and financial terms and structure.

VALUATION CONSIDERATIONS:

- Nature of the practice;
- Recurring business;
- Firm location;
- Business model and operational platforms;
- Ownership role and organizational structure;
- Number of clients and concentration of work in a few clients;
- Likelihood clients (and perhaps staff) will remain with the practice after the sale;
- Stability of the practice's revenue stream from month to month and perhaps year to year;
- Strengths and weaknesses of your practice;
- Overall reputation of the firm; and
- Desired financial terms and structure considerations

DETERMINE PROPER VALUATION METHOD:

1. Cost or book value method (tangible assets);
2. Transitioned market value (requires comparable law firm sales and broker opinion); and
3. Cash flows multiple approach which looks to historical and projected revenues, owner's income and other adjustments to determine potential price and benefit to buyer (most widely used in law firm environment).

7. SEARCH AND SEEK POTENTIAL BUYERS

- ▣ Consider a Buy/Sell Agreement or Assumption Agreement with an internal attorney or an outside firm for a potential future buyout or merger;
- ▣ Use Non-Disclosure Agreements, private and limited listings, and/or third-party brokers to ensure initial confidentiality about the transition is maintained;
- ▣ Ability of new attorney to pay for the practice – obtain financing and note;
- ▣ Personality, knowledge and ability of buyer to relate to clients and staff; and
- ▣ Transition time required of seller after the sale.

8. BUYER-SELLER MATCH

- ▣ Due diligence process with commence
- ▣ Check for conflicts among all parties to the transaction
- ▣ Discuss and finalize a transition plan

9. CONTRACT NEGOTIATIONS:

- ▣ Memorializing the agreements
- ▣ Include an Asset Purchase Agreement
- ▣ May include a Non-Disclosure Agreement

10. NOTICE TO CLIENTS – RULE 1.17 OR OTHER APPLICABLE REQUIREMENTS:

- Document receipt of notice by the client. Keep good records of what was sent to whom as well as their responses.
- Get instructions from clients as to how their files should be handled, i.e., transferred to new lawyer, stay with purchasing lawyer, etc.
- Get receipts from clients who pick up their files.

11. CLOSING:

- File appropriate pleadings, including motion to withdraw or substitution of counsel for all litigated matters.
- If an outright sale, consider firm dissolution filings with the NC State Bar and NC Secretary of State.
- If a merger or other transition option is used, consider responsibilities and needs to update firm name, addresses, etc.

12. POST-CLOSING:

- Contact your professional liability insurance carrier for an Extended Reporting Endorsement commonly called “tail insurance.”
- Contact the State Bar concerning “Inactive-Retired” status.
- Notify utilities, phone companies, internet service providers, re: transfer of service date.
- Notify vendors and suppliers of intent to terminate relationship.
- Arrange for transfer or forwarding of mail as appropriate.
- Schedule times to mentor/assist Buyer going forward, if part of the agreement.

The Law Practice Exchange aims to curb the lack of knowledge in the profession on law practice transitions by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com. © 2020 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

The information and advice provided in this publication is intended as general guidance only and is not necessarily specific to your individual situation, objectives or other needs. Make sure you seek a qualified expert opinion before proceeding with your transition objectives.

Additional Resources

“Selling Your Law Practice” by Mark Scruggs, November 2013

(<https://www.lawyersmutualinc.com/risk-management-resources/articles/selling-your-law-practice>)

Lawyers Mutual Risk Management Practice Guide – Buying or Selling a Law Practice by Tom Lenfestey, August 2015 (https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Buy_or_Sell_Practice.pdf)

“‘I’m Thinking of a Number Between 1 and...’ What’s Your Law Practice’s Valuation Number?” by Tom Lenfestey, August 2015 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/im-thinking-of-a-number-between-1-and-whats-your-law-practices-valuation-number>)

Checklist for Transitioning Leadership in a Law Firm

1. WHAT ARE YOUR REASONS FOR CONSIDERING TRANSITION?

Why do you want to leave your practice? _____

What do you want to do with your life once you leave? _____

Can you achieve the same objective without leaving the practice of law? YES/NO

2. CREATE AN "ESTATE PLAN" FOR THE PRACTICE:

- Prepare client list with all current contact info and status of cases
- Create a life memo with case strategy, outcome planned and tactics anticipated
- Groom a successor within the firm and develop timeframe for transitioning clients
- If there is no partnership agreement that controls the buy-out of your interest, then you'll need to broach the subject for consideration with how to deal with your interest, what the value is, and how to pay for your interest.
- Set up career counseling program to help mentor lawyers into retirement
- Set up alumni clubs for retired partners
- Transition plans should be structured gradually so client and rainmaking responsibilities gradually shift over a period of up to 5 years

3. ORGANIZE CLIENT TRANSFER PROCESS:

- Create a client profile
- Create a client map (relationships within the client entity)
- Create a matter map (recurring matters, types of matters, potential matters)
- Create a relationship tree (business partners, referral sources, community contacts, potential client targets)
- Create a client service checklist (for each client: how to bill, credit terms extended, how to best communicate)
- Develop an accountability plan for client transfer
- Develop process of including successor in client meetings and communications
- Maintain client contact during transition

4. SUCCESSION PLAN WHEN SELLING PRACTICE:

- Safeguard clients' interest, confidences, and property
- Review and satisfy record keeping responsibilities
- Keep diligent records
- Implement a file retention policy
- Return all client property
- Deal with unearned fees

- Close out trust accounts
- Review all open files
- File appropriate pleadings
- Review closed files
- Update clients contact info
- Retain or store files for specified period

5. ADDITIONAL CLOSING RESPONSIBILITIES AS BUSINESS OWNER:

- Inventory assets and liabilities
- Focus on collecting accounts receivable
- Consider engaging a collection agency
- Review insurance policies
- Assess bank obligations
- Negotiate debt with creditors
- Arrange to terminate lease and storage space
- Consider dissolution of entity
- Determine requirements for public notice
- Determine tax requirements
- Notify utility and telecommunications providers
- Notify vendors and suppliers
- File instructions with the post office
- Set moving date

6. INSURANCE:

- TAIL coverage
- Personal insurance (home, auto, jewelry, collectibles)
- Life insurance
- Long term care insurance
- Disability income insurance

7. LIFE AFTER RETIREMENT:

- Changing careers
- Giving back to the profession
- Self-assessment tools (Myers Briggs, Strengthfinders, MAPP Career Assessment)
- Develop an exit strategy planning process
- Develop an individual development plan

The Law Practice Exchange aims to curb the lack of knowledge in the profession on law practice transitions by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com. © 2020 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

The information and advice provided in this publication is intended as general guidance only and is not necessarily specific to your individual situation, objectives or other needs. Make sure you seek a qualified expert opinion before proceeding with your transition objectives.

Suggestions in Planning for a Sabbatical/Extended Absence

CONTEXT

There may be instances when a solo practitioner takes an extended absence from practice but with the intent to return. Such circumstances may include sabbatical, extended military service, prolonged vacation or recovery from surgery. With proper planning, the solo practitioner can successfully take a break from practice while ensuring that clients' needs are addressed.

Below is a checklist of suggestions.

1. Discuss your plan to take a sabbatical with your staff and your family.
2. Make financial plans for your office to continue to operate and to generate and collect fees to support the office while you are away.
3. Call your professional liability insurance carrier to discuss your intentions.
4. Begin incorporating the "sabbatical language" into your representation agreements if you think you may want to avail yourself of the program.
5. Contact attorneys who may be available and capable of serving as a Supervising Attorney during your absence.
6. Enter into an Agreement with a Supervising Attorney (similar to the enclosed Agreement with an Assisting Attorney for a law office that is closing) which requires him/her to review your client list in confidence to determine whether there are conflicts of interest.
7. Bring the Supervising Attorney into the office to meet with staff and to review office procedures while you are still in the office.
8. Notify your clients of your potential extended absence.

Additional Resources

Another excellent resource is Lawyers Mutual's Risk Management Practice Guide entitled *Extended Leave*. (https://nmcdr.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Extended_Leave.pdf)

Financial Planning Suggestions for Closing a Law Practice or “Show Me The Money”

CONTEXT

Attorneys who have assisted in closing law practices for attorneys who died or became suddenly incapacitated regularly complain that the funds available to pay for the orderly closing of the law practice are often insufficient. Assisting Attorneys often find themselves in a position of having to go to the Court for their fees from the general estate, which may cause some conflicts. Assisting Attorneys and Staff members should not have to worry about their compensation while being asked to assist the Deceased Attorney’s estate and family by closing the decedent’s practice in an orderly manner and thereby likely increasing the practice’s value to the estate.

The Planning Attorney should arrange to make funds available as working capital to pay expenses such as staff, rent and the Assisting Attorney to insure the orderly closing of the practice. Suggested methods of funding an office closing include:

1. Establish an Office Closing Fund of \$10,000–\$20,000* and designate the Fund’s purpose. Authorize the use of the Fund in your Will and direct your Personal Representative to use or allow its use for the purpose of funding the orderly closing of the office.
2. Take out a small life insurance policy of \$10,000–\$25,000 on your life and direct your personal representative to use the proceeds for the orderly closing of your office as an expense of the estate.
3. Organize your practice as a professional association or professional limited liability company and leave a legacy to the corporation or company with directions that the funds immediately be made immediately available to the Assisting Attorney to pay the bills of closing the office.
4. Have your PA or PLLC purchase a life insurance policy on your life naming the PA or PLLC as beneficiary of the policy. Direct in your Will or Trust that the life insurance funds be used for that purpose.
5. Discuss other insurance products with your insurance professional, such as a “Buyout Policy” or a “Professional Overhead Policy” that can be used to fund the orderly closing of the office.

The closing of your law practice should take only a few weeks if it is properly planned and funded so that your staff can begin work immediately under the direction of the Assisting Attorney to pull files together, notify clients and opposing attorneys, collect accounts receivable, prepare motions and notices to the Courts and other measures that will ease the transfer of files to clients and enhance the value of the practice.

*If 3-6 months of normal monthly firm costs/expenses is a greater amount, that larger amount should be the Office Closing Fund.

Are You Prepared for the Future?

As attorneys we are called on from time to time to professionally and competently advise and advocate for clients' needs and also to anticipate items they may not be thinking about in the road ahead for them in life or business. Many attorneys will also advise those same clients, businesses and individuals on contingency and succession planning they should consider if certain events should happen. Solid advice and the implementation handled by that attorney and other advisors on behalf of the client can work perfectly. The client gets to walk away knowing they have a great contingency plan in place and things will be alright upon disability, death, retirement and many of the other curveballs life could throw their way.

How about your plan? Have you been through the same level of planning with your team of advisors that you recommend to clients? Have you spent the time, money and effort on your own personal contingency plan? Make sure you aren't projecting "Do as I say not as I do" as it applies to the succession plan for your law practice and for you personally.

Follow these next steps to get prepared for your future:

1. **Stop Procrastinating!** No seriously, stop putting it off! Set aside some time to get out of the office and start considering the 'what-ifs' for you as a person and how those situations will impact your practice.
2. **Schedule Those Meetings.** Not with your clients, you are the client now. Reach out to your financial advisor, your trusted attorney, your CPA and a law practice consultant or broker to start the discussion. No idea who to start with? Anyone. Make a list. The key is to start and the pieces will begin to fall into place.
3. **Document Everything.** You are an attorney after all so make sure you are taking notes and preparing a war chest of information, goals, ideas, disaster planning info and all those other items you or someone else would need to complete your succession plan. It could be helpful to create an organized list of where all your important documents are stored as well.
4. **Get Informed.** Talk to your advisors. Open up about what your goals are and what your personal and financial needs are so that you can lay out a plan that truly works for you.
5. **Address the Contingencies.** Have you heard of a Will? Do you have one? How about one for your law practice? It's called an assumption, buy-sell or partnership succession agreement. Some form of agreement should be in place so that your practice, your clients, your family and most of all your professional legacy is not lost by just a winding down and shuttering of the client matters.

The Law Practice Exchange aims to curb the lack of knowledge in the profession on law practice transitions by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com. © 2015 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

The information and advice provided in this publication is intended as general guidance only and is not necessarily specific to your individual situation, objectives or other needs. Make sure you seek a qualified expert opinion before proceeding with your transition objectives.

How Prepared is Your Practice?

INTRODUCTORY QUESTIONS:

1. Do you have a law firm closing checklist and central knowledge source readily available? Yes/No
2. Do you have information about transition plans in engagement letters? Yes/No
3. Upon what life events do you want to consider a transition plan? _____

4. What are your personal objectives in transitioning your practice (client service, financial, etc.)? _____

5. Do you have a partnership, buy- sell or assumption agreement in place? Yes/No
6. Do you have a retirement plan and what is your timeline? Yes/No Timeline: _____

FOLLOW-UP TASKS:

COMPLETION DATE:

COMPLETED?

IMPORTANT INDIVIDUALS:

1. Assisting Attorney* _____
2. Authorized Signer† _____
3. Transition advisors‡ _____
4. Emergency Response Team§ _____
5. Who knows security codes and passwords to computers and voicemail? _____
6. Who has keys to offices, safety deposit boxes, and storage facilities? _____

FOLLOW-UP TASKS:

COMPLETION DATE:

COMPLETED?

IMPORTANT THINGS TO HAVE AND KEEP CURRENT:

- | | |
|---|--|
| <input type="checkbox"/> Time and billing records | <input type="checkbox"/> Staff directory and duties |
| <input type="checkbox"/> List of all of suppliers and service providers | <input type="checkbox"/> Record of your insurance policies |
| <input type="checkbox"/> Office procedures manual | <input type="checkbox"/> Inventory of client matters |
| <input type="checkbox"/> Database of key office records | <input type="checkbox"/> IT Information and passwords |
| <input type="checkbox"/> Calendar system with deadlines and follow- up dates | <input type="checkbox"/> Financial and accounting records |
| <input type="checkbox"/> Inventory of original documents and client property held by firm | |

FOLLOW-UP TASKS:

COMPLETION DATE:

COMPLETED?

The Law Practice Exchange aims to curb the lack of knowledge in the profession on law practice transitions by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com. © 2015 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

The information and advice provided in this publication is intended as general guidance only and is not necessarily specific to your individual situation, objectives or other needs. Make sure you seek a qualified expert opinion before proceeding with your transition objectives.

* An attorney to make arrangements with in order to close down your practice or to handle it while you are incapacitated; † A person to authorize as a signer on your lawyer trust account; ‡ i.e. CPA, financial advisor, insurance advisor, valuation expert, law practice broker; § Individuals that everyone in the office will listen to for instruction and who can make independent decisions for the firm, coordinate disaster preparations and responses, periodically reviews disaster plans and makes updates if necessary, and makes final decisions during emergencies.

Law Office List of Contacts

ATTORNEY NAME: _____ Date of Birth: _____
State Bar ID #: _____ Federal Employer ID #: _____
Office Address: _____ Office Phone: _____
Home Address: _____ Home Phone: _____
Email Address(es): _____

SPOUSE/CLOSEST FAMILY MEMBER:

Name: _____
Employer: _____ Work Phone: _____

OFFICE MANAGER:

Name: _____ Home Phone: _____
Home Address: _____

COMPUTER & TELEPHONE PASSWORDS:

(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box)

Name: _____
Home Address: _____
Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE:

Location: _____ Box #: _____
Obtain Key From: _____ Phone: _____
Address: _____
Other Signatory: _____ Phone: _____
Address: _____

SECRETARY:

Name: _____ Home Phone: _____
Home Address: _____

BOOKKEEPER:

Name: _____ Phone: _____
Address: _____

LANDLORD:

Name: _____ Phone: _____
Address: _____

PERSONAL REPRESENTATIVE:

Name: _____ Phone: _____

Address: _____

ATTORNEY:

Name: _____ Phone: _____

Address: _____

ACCOUNTANT:

Name: _____ Phone: _____

Address: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice: _____ Phone: _____

Address: _____

Second Choice: _____ Phone: _____

Address: _____

Third Choice: _____ Phone: _____

Address: _____

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust by Contacting: _____

Address: _____

PROFESSIONAL CORPORATIONS:

Corporate Name: _____ Date Incorporated: _____

Location of Corporate Minute Book: _____ Location of Corporate Seal: _____

Location of Corporate Stock Certificate: _____ Location of Corporate Tax Returns: _____

Fiscal Year-End Date: _____

CORPORATE ATTORNEY:

Address: _____

Phone: _____

PROCESS SERVICE COMPANY:

Name: _____ Phone: _____

Address : _____

Contact Person: _____

OFFICE-SHARER OR "OF COUNSEL":

Name : _____

Address: _____

OFFICE-SHARER OR "OF COUNSEL":

Name: _____

Address: _____

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____ Phone: _____

Address: _____

Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

LEGAL MALPRACTICE/PRIMARY COVERAGE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

LEGAL MALPRACTICE/EXCESS COVERAGE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

HEALTH INSURANCE:

Insurer Name: _____ Phone: _____

Address: _____

Policy #: _____ Contact Person: _____

DISABILITY INSURANCE:

Insurer Name: _____ Phone: _____
Address: _____
Policy #: _____ Contact Person: _____

LIFE INSURANCE:

Insurer Name: _____ Phone: _____
Address: _____
Policy #: _____ Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer Name: _____ Phone: _____
Address: _____
Policy #: _____ Contact Person: _____

CYBER-LIABILITY INSURANCE:

Insurer Name: _____ Phone: _____
Address: _____
Policy #: _____ Contact Person: _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Phone: _____
Address: _____
Obtain Key From: _____ Phone: _____
Address: _____
Items Stored: _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Phone: _____
Address: _____
Obtain Key From: _____ Phone: _____
Address: _____
Items Stored: _____

SAFE DEPOSIT BOX:

Institution: _____ Box #: _____
Address: _____
Phone: _____
Obtain Key From: _____ Phone: _____
Address: _____
Other Signatory: _____ Phone: _____
Address: _____
Items Stored: _____

LEASES:

Item Leased: _____ Lessor: _____

Address: _____

Phone: _____ Expiration Date: _____

Item Leased: _____ Lessor: _____

Address: _____

Phone: _____ Expiration Date: _____

Item Leased: _____ Lessor: _____

Address: _____

Phone: _____ Expiration Date: _____

LAWYER TRUST ACCOUNT:

IOLTA: _____ Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____ Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

GENERAL OPERATING ACCOUNT:

Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

Phone: _____ Account Number: _____

Other Signatory: _____ Phone: _____

Address: _____

MAINTENANCE CONTRACTS:

Item Covered: _____ Vendor Name: _____

Address: _____

Phone: _____ Expiration Date: _____

Item Covered: _____ Vendor Name: _____

Address: _____

Phone: _____ Expiration Date: _____

Item Covered: _____ Vendor Name: _____

Address: _____

Phone: _____ Expiration Date: _____

COMPUTER DATA:

Email Host: _____ Cloud Storage Host: _____

Website Host: _____ Location of External Hard Drive: _____

Social Media Identities: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

State of: _____

Bar Address: _____

Phone: _____ Bar ID #: _____

State of: _____

Bar Address: _____

Phone: _____ Bar ID #: _____

Other Resources

Please take time to review additional publications and materials that have been prepared to assist attorneys with their business decisions. The following organizations provide an extensive bibliography concerning transitional support, succession planning, sale of practice and other important topics.

1. North Carolina Bar Association Transitioning Lawyers Commission

<https://www.ncbar.org/members/communities/committees/transitioning-lawyers-commission/>

2. North Carolina Bar Association Professional Vitality Committee

<https://www.ncbar.org/members/communities/committees/professional-vitality-committee/>

3. North Carolina State Bar

Handbook for a Trustee of the Law Practice of an Unavailable (Disabled, Deceased, Disciplined, or Disappeared) Attorney (Revised April 2015) (<https://www.ncbar.gov/media/283998/trustee-handbook.pdf>)

4. Lawyers Mutual Liability Insurance Company of North Carolina

a. Lending Library Titles (www.lawyersmutualinc.com/risk-management-resources/book-lending-library)

- *Lawyers at Midlife* by Michael Long, John Clyde & Pat Funk
- *Life After Law; What Will You Do with the Next 6,000 Days?* by Edward Poll
- *Of Counsel: A Guide for Law Firms and Practitioners* by Jean L. Bateman, Harold G. Wren & Beverly J. Glascock
- *Passing the Torch without Getting Burned* by Peter A. Giuliani
- *The Lawyer's Guide to Balancing Life and Work* by George W. Kaufman
- *The Lawyer's Guide to Retirement: Strategies for Attorneys and their Clients* by David A. Bridewell & Charles Nauts
- *The Lawyer's Retirement Planning Guide* by Susan A. Berson

b. Practice Guides

- *Plan Ahead for Closing a Law Practice* (https://nmcldn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Closing_Practice.pdf)

c. Articles

- "Emergency Planning – Thinking About the Unthinkable" by Laura Loyek, January 2015 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/emergency-planning-thinking-about-the-unthinkable>)
- "My Top Ten Recommendations for Aging Well" by Mark Scruggs, January 2014 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/my-top-ten-recommendations-for-aging-well>)
- "Retire, Reset or Reinvent?" by Mark Scruggs, May 2014 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/retire-reset-or-reinvent>)

- “Selling Your Law Practice” by Mark Scruggs, November 2013 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/selling-your-law-practice>)
- “What to Expect When You’re Expecting to Retire” by Warren Savage, July 2013 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/from-start-to-finish-what-to-expect-when-youre-expecting-to-retire>)
- “Why Everyone Needs a Firm Emergency Plan” by Warren Savage, February 2013 (<https://www.lawyersmutualinc.com/risk-management-resources/articles/why-everyone-needs-a-firm-emergency-plan>)
- “Succession Planning: What’s Your Next Step?” by Susan Letterman White, February 2021 (<https://www.lawpracticetoday.org/article/succession-planning-whats-your-next-step/>)

d. **Blog Posts**

- “4 Things Every Retiring Attorney Should Know” by Jay Reeves, September 2013 (<https://www.lawyersmutualinc.com/blog/4-things-every-retiring-attorney-should-know>)
- “Ready, Set, Retirement?” by Pat Murphy (<https://www.lawyersmutualinc.com/blog/ready-set-retirement>)

e. **Other**

- HELP Team (<https://www.lawyersmutualinc.com/risk-management-resources/help-team>)

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART II.

INACTIVE-RETIRED STATUS WITH THE NORTH CAROLINA STATE BAR

Applicable North Carolina State Bar Rule	36
Instructions for Petitioners for Inactive Status	38
Petition for Transfer to Inactive Status	40

Applicable North Carolina State Bar Rule

In 2014, the North Carolina State Bar revised its rules to include a “retired” category of “Inactive Members.”

Below is a copy of the rule and the petition for inactive status.

SUBCHAPTER A

Organization of the North Carolina State Bar

Section .0200 Membership – Annual Membership Fees

.0201 Classes of Membership

(a) Two Classes of Membership

Members of the North Carolina State Bar shall be divided into two classes: active members and inactive members.

(b) Active Members

The active members shall be all persons who have obtained licenses entitling them to practice law in North Carolina, including persons serving as justices or judges of any state or federal court in this state, unless classified as inactive members by the council. All active members must pay the annual membership fee.

(c) Inactive Members

(1) The inactive members shall include:

- (A) all persons who have been admitted to the practice of law in North Carolina but who the council has found are not engaged in the practice of law or holding themselves out as practicing attorneys and who do not occupy any public or private position in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law, and
- (B) those persons granted emeritus pro bono status by the council and allowed to represent indigent clients on a pro bono basis under the supervision of active members working for nonprofit corporations organized pursuant to Chapter SSA of the General Statutes of North Carolina for the sole purpose of rendering legal services to indigents.

- (2) Inactive members of the North Carolina State Bar may not practice law, except as provided in this rule for persons granted emeritus pro bono status, and are exempt from payment of membership dues during the period in which they are inactive members. For purposes of the State Bar’s membership records, the category of inactive members shall be further divided into the following subcategories:

(A) Nonpracticing

This subcategory includes those members who are not engaged in the practice of law or holding themselves out as practicing attorneys and who hold positions unrelated to the practice of law, or practice law in other jurisdictions.

(B) Retired

This subcategory includes those members who are retired from the practice of law and who no longer hold themselves out as practicing attorneys. A retired member must hold himself or herself out as a "Retired Member of the North Carolina State Bar" or by some similar designation, provided such designation clearly indicates that the attorney is "retired."

(C) Disability inactive status

This subcategory includes members who suffer from a mental or physical condition which significantly impairs the professional judgment, performance, or competence of an attorney, as determined by the courts, the council, or the Disciplinary Hearing Commission.

(D) Disciplinary suspensions/disbarments

This subcategory includes those members who have been suspended from the practice of law or who have been disbarred by the courts, the council, or the Disciplinary Hearing Commission for one or more violations of the Rules of Professional Conduct.

(E) Administrative suspensions

This subcategory includes those members who have been suspended from the practice of law, pursuant to the procedure set forth in Rule .0903 of subchapter ID, for failure to fulfill the obligations of membership.

(F) Emeritus pro bono status

This subcategory includes those members who are permitted by the council to represent indigent persons under the supervision of active members who are employed by nonprofit corporations duly authorized to provide legal services to such persons. This status may be withdrawn by the council for good cause shown pursuant to the procedure set forth in Rule .0903 of subchapter ID.

History Note: Statutory Authority G.S. 84-16; G.S. 84-23

Readopted Effective December 8, 1994

Amended March 6, 2008; March 6, 2014

Property of the North Carolina State Bar

Instructions for Petitioners for Inactive Status

revised February 2018

Procedure

The petition must be reviewed by the Administrative Committee and approved by the State Bar Council. The committee and the council meet quarterly in January, April, July, and October of each year. The dates of the meetings are posted on the NC State Bar's website: www.ncbar.gov.

Instructions for Completing and Filing Petition

1. Print or type the petition. Complete, date, and sign the petition to acknowledge that you have read and understand the questions or statements on the petition.
2. The mandatory membership and CLE fees, for the year in which you file the petition, must be current. If you have not paid the current year's membership fees, contact the Membership Department at (919) 828-4620, for the balance owed to the State Bar. For questions concerning your CLE fees, contact the CLE Department at (919) 733-0123.
3. The petition must be postmarked on or before December 31 to avoid incurring the mandatory membership fees for the following year.
4. Mail the petition and any supporting documentation to:
NC State Bar Membership Department
PO Box 26088
Raleigh, NC 27611
5. Petitions received 30 days prior to the meeting of the State Bar Council will receive a confirmation notice (via mail or e-mail). Petitions submitted later than 30 days prior to the meeting may be delayed in processing until the next quarterly State Bar meeting. Keep a copy of your petition for your records. Please contact the Membership Department at (919) 828-4620 if you do not receive a confirmation notice.
6. If your request for inactive status is granted by the State Bar Council, an inactive order will be mailed to the address you provide on the petition within a couple of weeks after the meeting.

Effect of Inactive Status:

If your membership status is inactive, you cannot practice North Carolina law, including giving advice regarding North Carolina law, or serving as a judge in any tribunal that requires an active North Carolina law license. You are also prohibited from serving in an "of counsel" capacity and from holding yourself out as a "lawyer," "attorney," "attorney at law" or any other designation that implies that you are an active attorney who can provide legal services in North Carolina.

However, if you want to assist with the representation of Legal Aid clients (or other indigent persons served by a nonprofit corporation), you may petition for emeritus pro bono status: <https://www.ncbar.gov/media/283904/Petition-For-Emeritus-Pro-Bono-Status-For-Inactive-Members.pdf>.

Certified Specialists: To retain your certification, you must remain substantially involved in your specialty practice area. Substantial involvement is defined differently for each specialty but, generally, it requires that the specialist actively practice the specialty for not less than 25% of a full time practice every calendar year. Before petitioning for inactive status, check the recertification standards for your specialty on the specialization website: <https://www.nclawspecialists.gov>.

NOTE: Inactive members do not receive the NC State Bar Journal. You can visit the NC State Bar's website at www.ncbar.gov to view the Journal, proposed rule amendments, etc.

Pursuant to 27 N.C.A.C. Chapter 1D, Rule .0902, depending on the length of your inactive status, you may be subject to additional CLE requirements and, in some instances, passage of the Bar exam prior to reinstatement.

Property of the North Carolina State Bar



Petition for the Transfer to Inactive Status to the Council of the North Carolina State Bar

1. Name: _____ State Bar # _____

2. The address and telephone numbers where communications from the State Bar should be sent during my inactive status:

_____	_____
Street Address	City, State, Zip
_____	_____
Home Phone #	Work Phone #

E-mail Address	

3. I desire to be placed on inactive status for the following reason:

- Retirement
- Not Practicing Law in North Carolina

4. I have paid all membership dues, assessments, and fees owed to the North Carolina State Bar, including those for the current year. I have also paid all fees owed to my local judicial district bar.

5. I acknowledge that, if this petition is granted, I will remain subject to the Rules of Professional Conduct and to the disciplinary jurisdiction of the State Bar including jurisdiction in any pending matter before the Grievance Committee or the Disciplinary Hearing Commission. I further acknowledge that I will be subject to the requirements for reinstatement, including but not limited to any CLE requirements, in effect at the time of filing a petition for reinstatement.

6. I understand that if I am granted inactive status that I cannot practice North Carolina law or serve as "of counsel" to any North Carolina firm, organization or entity. Effective as of the date I am granted inactive status, I have properly withdrawn from the representation of all clients and, with regard to matters in litigation, I have followed the court's protocol for withdrawal.

7. If applicable, I have filed the appropriate documents with the NC Secretary of State, Corporations Division, and the NC State Bar to dissolve or amend the articles of _____, the professional organization with which I was affiliated. (PA / PC / PLLC name)

8. I wish for my petition to be considered at the _____ State Bar Council Meeting. (January, April, July, or October)

9. By signing this petition, I confirm I have read and understand the questions or statements herein.

_____	_____
Signature	Date

FOR OFFICE USE ONLY
membership fees paid (Y/N) _____
Owes CLE fees and/or ARF (Y/N) _____

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART III.

DESIGNATION OF ASSISTING ATTORNEY

Agreement Between Planning Attorney and Assisting Attorney to Close Law Practice	44
Will Provisions	49
Notice to Professional Liability Insurance Carrier of Designated Assisting Attorney	50
Conditional Durable Power of Attorney	51
Specimen Signature of Attorney-in-Fact	52
Letter of Understanding for Delivery of Power of Attorney	53

AGREEMENT BETWEEN PLANNING ATTORNEY AND ASSISTING ATTORNEY

CONTEXT

The sample Agreement provided below gives the Assisting Attorney the power to determine whether you are disabled, impaired, or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your bank accounts (including your trust account) and to close your law practice. The Agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement.

If you want a separate Trust Account Signor and you do not want the Assisting Attorney to be the person who signs on your trust account, you will need to modify this agreement.

AGREEMENT TO CLOSE LAW PRACTICE

Between: _____, hereinafter referred to as "Planning Attorney,"

And: _____, hereinafter referred to as "Assisting Attorney."

1. Purpose.

The purpose of this agreement is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney's law practice due to death, disability, impairment, or incapacity.

2. Parties.

The term Assisting Attorney refers to the attorney designated in the caption above or the Assisting Attorney's Alternate. The term Planning Attorney refers to the attorney designated in the caption above and the Planning Attorney's representatives, heirs, or assigns.

3. Establishing Death, Disability, Impairment, or Incapacity.

In determining whether Planning Attorney is dead, disabled, impaired, or incapacitated, Assisting Attorney may act upon such evidence as Assisting Attorney shall deem reasonably reliable, including, but not limited to, communications with Planning Attorney's family members, 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 Planning Attorney's disability, impairment, or incapacity has terminated. Assisting Attorney is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement.

4. Consent to Close Practice.

Planning Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Planning Attorney's law practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close his/her own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as Planning

Attorney could do personally if Planning Attorney were able. It is Planning Attorney's specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Planning Attorney's death, disability, impairment, or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney's death, disability, impairment, or incapacity, but instead the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Planning Attorney's death, disability, impairment, or incapacity, Planning Attorney designates Assisting Attorney as signatory, or in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts, and trust accounts. Planning Attorney's consent includes but is not limited to:

- Entering Planning Attorney's office and using the Planning Attorney's equipment and supplies as needed to close Planning Attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property comprising Planning Attorney's law office, including client files and records;
- Examining files and records of Planning Attorney's law practice and obtaining information as to any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients, that Planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Accessing any desktop or laptop computers, telephones, applications or software programs or any other electronic media or device that Assisting Attorney reasonably believes may contain client files or other law office information;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- 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 employment of other counsel by the clients;
- Filing notices, motions, and pleadings on behalf of clients where the clients' interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected, and informing them that Planning Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing Planning Attorney's clients with a final accounting and statement for services rendered by Assisting Attorney, return of client funds, collection of fees on Planning Attorney's behalf or on behalf of Planning Attorney's estate, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney's law practice or any of its assets to potential purchasers; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney's 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.

5. Payment For Services.

Planning Attorney agrees to pay Assisting Attorney a reasonable sum for services rendered by Assisting Attorney while closing the law practice of Planning Attorney. Assisting Attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney agrees to provide the services specified herein as an independent contractor.

6. Preserving Attorney-Client Privilege.

Assisting Attorney agrees to preserve the confidentiality of Planning Attorney's clients and their attorney-client privilege and shall only make disclosures of information reasonably necessary to carry out the purpose of this Agreement.

7. Delete one of the following paragraphs as appropriate:

Assisting Attorney is Attorney for Planning Attorney.

Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the North Carolina State Bar Code of Professional Responsibility.

OR:

Assisting Attorney is Not Attorney for Planning Attorney.

Assisting Attorney is not the attorney for Planning Attorney.

8. Providing Legal Services.

Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's former clients providing Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's former clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's former clients and to have clients pay Assisting Attorney for his or her legal services. Assisting Attorney agrees to check for conflicts of interest, and when necessary, to refer the clients to another attorney.

9. Informing North Carolina State Bar.

Assisting Attorney agrees to inform the North Carolina State Bar of the location of Planning Attorney's closed files and the name, address, and phone number of the contact person for retrieving those files.

10. Contacting Lawyers Mutual Liability Insurance Company (or other professional liability insurance carrier).

Planning Attorney authorizes Assisting Attorney to contact Lawyers Mutual Liability Insurance Company or other professional liability insurance carrier concerning any legal malpractice claims or potential claims.

11. Providing Clients With Accounting.

Assisting Attorney agrees to provide Planning Attorney's former clients with a final accounting and statement for legal services of Planning Attorney based on the Planning Attorney's records. Assisting Attorney agrees to return client funds to Planning Attorney's former clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

12. Indemnification.

Planning Attorney agrees to indemnify Assisting Attorney against any claims, loss, or damage arising out of any act or omission by Assisting Attorney under this agreement, provided the actions or omissions of

Assisting Attorney were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Assisting Attorney was assisting Planning Attorney with the closure of Planning Attorney's office. This indemnification agreement does not extend to any acts, errors, or omissions of Assisting Attorney while rendering or failing to render professional services in Assisting Attorney's capacity as attorney for the former clients of Planning Attorney. Assisting Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

13. Option to Purchase Practice.

Assisting Attorney shall have the first option to purchase the practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the North Carolina State Bar Rules of Professional Conduct and other applicable law.

14. Arranging to Sell Practice.

If Assisting Attorney opts not to purchase Planning Attorney's practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney's practice and will forward all monies received to the Planning Attorney or Planning Attorney's estate.

15. Fee Disputes to be Submitted to the North Carolina State Bar.

Planning Attorney and Assisting Attorney agree that all fee disputes between them will first be submitted to the North Carolina State Bar Fee Dispute Resolution Program.

16. Termination.

This Agreement shall terminate upon:

- (a) delivery of written notice of termination by Planning Attorney to Assisting Attorney during any time that Planning Attorney is not under disability, impairment, or incapacity as established under Section 3 of this Agreement;
- (b) delivery of written notice of termination by Planning Attorney's representative upon a showing of good cause; or
- (c) delivery of a written notice of termination given by Assisting Attorney to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney pursuant to this Agreement.

If this Agreement is terminated for any reason, Assisting Attorney or Assisting Attorney's Alternate acting on his or her behalf shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney's behalf within thirty (30) days of termination or resignation; and (2) provide Planning Attorney with Planning Attorney's files, records, and funds.

[Planning Attorney]

[Date]

(Continue to Notarization next page)

Additional Resources

Another excellent resource is Lawyers Mutual's Risk Management Practice Guide entitled Closing a Law Practice: Through Retirement, Moving to a New Firm, or Death of a Fellow Lawyer. https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Closing_Practice.pdf

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20_____.

[Notary Public]

My commission expires: _____

[Assisting Attorney] [Date]

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20_____.

[Notary Public]

My commission expires: _____

WILL PROVISIONS

(Sample I Modify as appropriate)

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 Assisting Attorney on [Date]; if that Agreement is not in effect, my personal representative is authorized to enter into a similar agreement or agreements with other attorneys as my personal representative, in his or her sole discretion, may determine to be necessary or desirable to protect the interests of my clients and dispose of my practice, including but not limited to: sale of the practice, collection of accounts receivable, payment of expenses relating to the practice, and employing an attorney or attorneys to review my files, complete unfinished work, notify my clients of my death and assist them in finding other attorneys, and provide long-term storage of and access to my closed files.

OR

My personal representative is expressly authorized and directed to take such steps as he or she 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 an attorney or attorneys to review my files, complete unfinished work, notify my clients of my death and assist them in finding other attorneys, and provide long-term storage of and access to my closed files.

NOTICE TO PROFESSIONAL LIABILITY INSURANCE CARRIER OF DESIGNATED ASSISTING ATTORNEY

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

Name of Authorized Assisting Attorney: _____

Address: _____

Phone: _____ N.C. State Bar #: _____

Name of Authorized Assisting Attorney: _____

Address: _____

Phone: _____ N.C. State Bar #: _____

[Planning Attorney]

[Date]

Mail this form to:

Lawyers Mutual Liability Insurance Company of NC

P.O. Box 1929,
Cary, NC 27512-1929

1001 Winstead Drive, Suite 285
Cary, NC 27513

Or your professional liability insurance carrier, and:

North Carolina State Bar

217 East Edenton Street
Raleigh, NC 27601

CONDITIONAL DURABLE POWER OF ATTORNEY

NORTH CAROLINA
_____ COUNTY

**CONDITIONAL DURABLE
POWER OF ATTORNEY
(Law Office Closing)**

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 law office bank account(s) and safe deposit box(es). I do further authorize my banking institutions to transact my law office 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 law office 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 law office account(s), make electronic funds transactions, receive statements and notices on the account(s), and do anything with respect to the law office 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 shall be effective upon execution; however, my attorney-in-fact shall not be empowered to act on my behalf until I become incapacitated or mentally incompetent. My attorney-in-fact will NOT (except at my written request) exercise any authority granted by this instrument unless and until he/she receives a written certificate by two (2) licensed medical doctors stating that physically or mentally I am incapable of handling my own business affairs. My said attorney-in-fact shall have no duty to inquire regarding my physical or mental condition, and shall have no duty (except at my written request) to exercise his/her powers under this instrument until he/she has received certification from two medical doctors as described above.

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.

[Planning Attorney]

[Date]

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20_____.

[Notary Public]

My commission expires: _____

SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

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

[Assisting Attorney] [Date]

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20_____.

[Notary Public]

My commission expires: _____

LETTER OF UNDERSTANDING FOR DELIVERY OF POWER OF ATTORNEY

CONTEXT

This letter may be used if the Planning Attorney prefers to allow a trusted family member or friend keep custody of the Power of Attorney, rather than the Assisting Attorney.

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, incapacity, illness, or absence. In determining whether to deliver the Power of Attorney, you may 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]

[Planning Attorney]

[Date]

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART IV.

PROTECTING YOUR CLIENTS' INTERESTS IN YOUR ABSENCE

Client Engagement Letter Notifying Client of Assisting Attorney	56
Engagement Letter and Fee Agreement Follow-Up Letter to Initial Interview	58
Contingent Fee Agreement	60
Explanation of Contingent Fee Agreement	62
Letter Advising Clients That Lawyer is Closing His/her Office	63
Letter Advising Clients That Lawyer is Taking a Temporary Leave of Absence	65
Letter Advising Clients That Lawyer is Unable to Continue Practicing Law	66
Letter from Exiting Lawyer's Firm to Clients Offering to Continue Representation	67
Office Closure File Tracking Chart	68
Client's Request for File	69
Client's Authorization for Transfer of Client File	70
Client's Acknowledgment of Receipt of File	71

CLIENT ENGAGEMENT LETTER NOTIFYING CLIENT OF ASSISTING ATTORNEY

(Sample | Modify as appropriate)

CONTEXT

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.

[INSERT REVISED LETTER]

Dear *[Client Name]*:

The purpose of this letter is to confirm, based on our conversation of *[date]*, that *[Firm Name]* will represent you in *[describe matter]*. We will provide the following services: *[list services to be provided]*.

Attached for your use is information on our billing and reporting procedures. Our fee is *[dollars per hour]* for services performed by lawyers of this firm and *[dollars per hour]* for services performed by our non-lawyer staff. You will also be billed for expenses and costs incurred on your behalf.

Our expectations of you are: *[list any expectations concerning payment of bills, responses to requests for information, etc.]*.

This firm has not been engaged to provide the following services: *[list services that are outside the scope of the representation]*.

I estimate that fees and expenses in this case will be *[provide a realistic, worst-case estimate of fees and expenses]*. Please keep in mind that this is only an estimate and that, depending on the time required and the complexity of the action, actual fees and expenses may exceed this estimate. You will be billed for actual fees and expenses.

It is very difficult to accurately predict how long it will take to conclude your case. Generally, these cases take *[provide a realistic, worst-case estimate of time to be spent on the case]*. This is only an estimate, and the actual time required to conclude this matter may be greater than expected.

I have enclosed a copy of the initial interview form. If any of the information on this form is incorrect, please notify *[Primary Contact]* immediately. If you have any questions about this information, please call *[Primary Contact]*.

My objectives are to provide you with excellent legal services and to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. To accomplish this, I have arranged with another attorney to assist with closing my practice in the event of my death, disability, impairment, or incapacity. That attorney's name is *[Attorney's Name]*. You have the right to select another attorney of your choice to continue your representation in the event of such an occurrence. In such event, my office staff or the assisting attorney will contact you and provide you with further information about how to proceed. By signing below, you are also consenting to the assisting lawyer (1) seeing your file because it is confidential, and (2) the assisting lawyer providing any representation to the client necessary to facilitate the representation until the representation can be transferred to your new chosen counsel if applicable.

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 original documents to you. Upon request, I will furnish you with your complete file. I will store the file for a minimum of six years. I may destroy the file after that period of time unless you instruct me in writing now to keep it longer.

If any of the information in this letter is not consistent with your understanding of our agreement, please contact me before signing this agreement. Otherwise, please sign the agreement 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,

[Planning Attorney]

[Date]

I have read this letter and consent to it.

[Planning Attorney]

[Date]

Enclosures

ADDITIONAL RESOURCES

Review the following Rules of Professional Conduct and Ethics Opinions located in the Appendix of this publication:

- [Rule 1.2: Scope of Representation and Allocation of Authority](#)
- [Rule 1.5: Fees](#)
- [RPC 209: Disposing of Closed Client Files](#)
- [2008 FEO 10: Guidelines for Fees Paid in Advance](#)

ENGAGEMENT LETTER AND FEE FOLLOW-UP LETTER TO INITIAL INTERVIEW

(Sample | Modify as appropriate)

CONTEXT

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.

Dear *[Client 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 *[dollars 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 Law Firm 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 attorney to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the assisting attorney 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. Upon request, I will furnish you with a complete copy of your file. I will store the file for a minimum of six (6) years. I may destroy the file after that period of time without further notice to you.

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,

[Planning Attorney]

[Date]

I have read this letter and consent to it.

[Planning Attorney]

[Date]

Enclosures

ADDITIONAL RESOURCES

Review the following Rules of Professional Conduct and Ethics Opinions located in the Appendix of this publication:

- [Rule 1.2: Scope of Representation and Allocation of Authority](#)
- [Rule 1.5: Fees](#)
- [RPC 209: Disposing of Closed Client Files](#)
- [2008 FEO 10: Guidelines for Fees Paid in Advance](#)

CONTINGENT FEE AGREEMENT

(Sample | Modify as appropriate)

CONTEXT

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.

I, [*Client Name*], hereby retain [*Attorney Name*], Attorney at Law, to represent me for the purpose of recovery of damages arising out of an accident or incident occurring on [*date*], at [*location*].

I agree to pay the actual expenses reasonably incurred by my attorney on my behalf. These expenses may include filing fees, service fees, witness fees, doctors' reports, medical records, court reporter fees, court trial fees, photocopying costs, long distance telephone calls, postage, witness fees, mileage fees, and other necessary court and office costs. My attorney will not incur costs of more than [*dollar amount*] without first notifying me.

With my consent, my attorney may employ investigators and experts as may be required to prepare, pursue, and litigate my case. All fees and expenses charged by the investigators and experts will be paid by me. My attorney is authorized to pay the investigator or experts' fees or expenses from the funds I deposit with the attorney or from the proceeds of any settlement or judgment in my case.

I agree to pay my attorney from the proceeds of any recovery, according to the following schedule:

- 25% of all sums recovered if settlement is negotiated before filing of the complaint.
- 33 1/3% of all sums recovered if settlement is negotiated before commencement of trial or arbitration hearing.
- 40% of all sums recovered during or after trial or arbitration has commenced. "Sums recovered" means [*insert appropriate language*].

If no recovery on my behalf is made, I am not liable for attorney fees to my attorney but will be responsible only for the actual expenses incurred by my attorney. I have deposited [*dollar amount*] with my attorney which is to be used toward costs and other expenses.

No fee will be charged for assistance to me in obtaining recovery of benefits under my insurance policy for Medical Payments Coverage (MedPay), unless MedPay benefits are denied by my insurance company. My attorney may charge the percentage fee based on the above schedule on any MedPay benefits collected after a denial by my insurance company. Also, if my insurance company agrees, my attorney may collect a percentage of the subrogated proceeds paid by the party at fault to my insurance company.

My attorney may assign all or any portion of the work to be performed to an associate or to other attorneys in the firm and may use paralegals or others working under my attorney's supervision.

In the event of my attorney's death, disability, impairment, or incapacity, I agree that another attorney appointed by my attorney can protect my rights and help close my attorney's practice.

My attorney agrees to send me copies of all documents filed in my case, all correspondence, and any and all other printed materials for my personal file. My attorney will also keep a copy of all information for [his/her] file. When my attorney has completed all the legal work necessary for my case, my attorney will close [his/her] file and return all my original documents to me. My attorney will then store [his/her] file for six

(6) years after my case is closed. After that time, my attorney will destroy [his/her] file. (Note that some files may need to be kept for 10 years due to statutes of limitation.)

My attorney agrees to provide conscientious, competent, and diligent services, and I agree to cooperate with my attorney and others working on my case by keeping appointments, appearing for depositions, producing documents, attending special court appearances, and making payments as agreed.

This agreement does not cover attorney's fees in the event of an appeal or retrial.

I AM ENTITLED TO RESCIND THIS AGREEMENT WITHIN 24 HOURS AFTER SIGNING, UPON WRITTEN NOTICE TO MY ATTORNEY. (Please read the explanation on the following page before signing.)

SIGNED by me on _____, 20_____.

APPROVED:

[Attorney Name]

[Client Name]

Enclosure

ADDITIONAL RESOURCES

Review the following Rule of Professional Conduct and Ethics Opinion located in the Appendix of this publication:

- [Rule 1.5: Fees](#)
- [RPC 174: Fees for the Collection of "Med-Pay"](#)

EXPLANATION OF CONTINGENT FEE AGREEMENT

This is an explanation of your Contingent Fee Agreement with us. Please read it and sign it before you sign the Agreement.

The Contingent Fee Agreement says:

1. We agree to handle your case.
2. If we handle your case to completion and do not recover any money for you, you do not have to pay us for our services.
3. If we handle your case to completion and recover some money for you, you must pay us for our services. Our fee will be a percentage of what we recover for you. The percentage is set forth in the Contingent Fee Agreement.
4. If we advance money for filing fees, witness fees, doctors' reports, medical records, court reporters' services, or other expenses on your behalf, you must repay us whether the case is won or lost.
5. You may cancel the Contingent Fee Agreement by notifying us in writing within 24 hours after you sign it.
6. If you cancel the Agreement within the 24-hour period, you will have no obligation to us.

I have read the foregoing explanation before I signed a Contingent Fee Agreement with [Attorney Name].

[Client Name]

[Date]

ADDITIONAL RESOURCES

Review the following Rule of Professional Conduct located in the Appendix of this publication:

- [Rule 1.5: Fees](#)

LETTER ADVISING CLIENTS THAT LAWYER IS CLOSING HIS/HER OFFICE

(Sample | Modify as appropriate)

Dear *[Client Name]*:

As of *[date]*, I will be closing my law practice due to *[provide reason, if possible]*. I will be unable to continue representing you on your legal matters.

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. Also, the North Carolina Bar Association provides a lawyer referral service that can be reached at the North Carolina Bar Association by calling 1-800-662-7660 or (919) 677- 8574, or online at <https://www.ncbar.org/public-resources/find-an-nc-lawyer/>. If my representation of you involves an active court case, I am required to file a motion in that action asking the court's permission to withdraw from your representation.

When you select your new attorney, please provide me with written authority to transfer your file and any of your funds that I am holding in my trust account for you to your new attorney. If you prefer, you may come to our office and pick up your file, any property or funds of yours that we are holding for you, and deliver them to that attorney yourself.

It is imperative that you obtain a new attorney immediately. Please let me know the name of your new attorney or pick up a copy of your file by *[date]*.

If you consent, *[I/Name of Attorney who will store files]* will continue to store my copy of your closed file for a minimum of six (6) years. After that time, *[I/Name of Attorney who will store files]* may destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. *[If relevant, add: "If you object to <Name of Attorney who will store files> storing my copy of your closed file, let me know immediately and I will make alternative arrangements."]*

If you or your new attorney need a copy of the closed file, please feel free to contact me. I will be happy to provide you with a copy.

Within the next *[number]* weeks I will be providing you with a full accounting of your funds in my trust account along with any fees currently owed. If there are any of your funds remaining in my trust account at this time, I will include a trust account check with the accounting.

You will be able to reach me at the address and phone number listed on this letter until *[date]*. After that time, you or your new attorney can reach me at the following phone number and address:

[Name]

[Address]

[Phone]

Remember, it is imperative to retain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved.

I appreciate the opportunity of providing you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[Exiting Attorney]

[Date]

ADDITIONAL RESOURCES

Review the following Rule of Professional Conduct located in the Appendix of this publication:

- [Rule 1.15: Safekeeping Property](#)

LETTER ADVISING CLIENTS THAT LAWYER IS TAKING A TEMPORARY LEAVE OF ABSENCE

(Sample | Modify as appropriate)

CONTEXT

Ideally, you have an agreement similar to the form on [page 55](#) arranging for an Assisting Attorney. You also have a Client Engagement letter similar to the one at [pages](#) or a Contingent Fee Agreement like the one at [page 59](#) laying the groundwork for this letter. If you do not, then you should obtain the client's written informed consent to the Supervising Attorney obtaining confidential information. See Rule of Professional Conduct 1.6: CONFIDENTIALITY OF INFORMATION.

Dear [*Client Name*]:

As of [*date*], and for the next [*number*] months, I shall be temporarily away from the office due to [*insert reason*]. You have an absolute right to terminate my representation of you and choose new counsel. If you wish to do so, I will assist you by providing referrals of competent attorneys if you wish. However, during my absence and if you consent, I have arranged for [*Supervising Attorney*], a very competent attorney who has retired from law practice, to maintain my office with the assistance of my very competent staff, who are familiar with your case or general legal matters. I have made this arrangement so that your case will have oversight in my absence. I will be sure to have [*Supervising Attorney*] brought up to speed on your case before I take my leave.

I shall be pleased to discuss your case with you before I leave for [*extended absence*].

In the meantime, please feel free to contact me if you have any questions or concerns. I want you to have confidence that you and the outcome of your legal matters are very important to me.

In the event that you should choose to employ another attorney, please provide me with the new attorney's name and with written authority to transfer your file and any of your funds that I am holding in my trust account for you to your new attorney. If you prefer, you may come to our office and pick up your file, any property or funds of yours that we are holding for you and deliver them to that attorney yourself.

Thank you for your loyalty as a client.

Sincerely,

[*Temporarily Exiting Attorney*]

[*Date*]

LETTER ADVISING CLIENTS THAT LAWYER IS UNABLE TO CONTINUE PRACTICING LAW

(Sample | Modify as appropriate)

Dear *[Client Name]*:

Due to ill health, *[Affected Attorney]* is no longer able to continue practicing law. You will need to retain the services of another attorney to represent you in your legal matters. My name is *[Assisting Attorney]*, and I will be assisting *[Affected Attorney]* in closing *[his/her]* practice. We recommend that you retain the services of another attorney immediately so that all of your legal rights can be preserved.

You will need a copy of your legal file for use by you and your new attorney. I am enclosing a written authorization for your file to be released directly to your new attorney. You or your new attorney can forward this authorization to us and we will release the file as instructed. If you prefer, you can come to *[address of office or location for file pickup]* and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Please make arrangements to pick up your file, or have your file transferred to your new attorney, by *[date]*. It is imperative that you act promptly so that all of your legal rights will be preserved.

Your closed files will be stored in *[location]*. If you need a closed file, you can contact me at the following address and phone number until *[date]*:

[Name]

[Address]

[Phone]

After that time, you can contact *[Affected Attorney]* for your closed files at the following address and phone number:

[Name]

[Address]

[Phone]

If any funds or property are being held by *[Affected Attorney]* on your behalf, you are entitled to have them delivered to you as soon as reasonably possible. Within the next *[time period]*, you will be provided with a full accounting of your funds in *[Affected Attorney]* trust account, along with any fees currently owed *[Affected Attorney]*. If there are any of your funds remaining in *[Affected Attorney]* trust account at that time, a trust account check will be included with the accounting.

On behalf of *[Affected Attorney]*, I would like to thank you for giving *[him/her]* the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

[Assisting Attorney]

[Date]

Enclosure

LETTER FROM EXITING LAWYER'S FIRM TO CLIENTS OFFERING TO CONTINUE REPRESENTATION

Dear *[Client Name]*:

Due to ill health, *[Affected Attorney]* is no longer able to continue representing you on your case(s). Our firm is willing to continue representing you and *[Attorney Name]*, a member of this firm, is available to continue handling your case if you wish *[him/her]* to do so. However, you have the right to select the attorney of your choice to represent you in this matter.

If you wish our firm to continue handling your case, please sign the authorization at the end of this letter and return it to our office. If this is not your desire, we recommend that you retain the services of another attorney immediately so that all of your legal rights can be preserved.

If you choose to retain another attorney, you will need a copy of your legal file for use by you and your new attorney. We are enclosing a written authorization for your file to be released directly to your new attorney. You or your new attorney can forward this authorization to us and we will release the file as instructed. If you prefer, you can come to *[address of office or location for file pickup]* and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Since time deadlines may be involved in your case, it is imperative that you act immediately. Please provide authorization for us to represent you or written authority to transfer your file to your new attorney by *[date]*, so that all of your legal rights can be preserved.

If any funds or property are being held by our firm on your behalf, you are entitled to have them delivered to you as soon as reasonably possible. Within the next *[number]* weeks you will be provided with a full accounting of your funds in this firm's trust account, along with any fees currently owned *[Affected Attorney]*. If there are any of your funds remaining in our firm's trust account at that time, a trust account check will be included with the accounting.

On behalf of *[Affected Attorney]*, I would like to thank you for giving *[Attorney Name]* and our firm the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

[Assisting Attorney] *[Date]*

Enclosures

I want a member of the firm of *[Law Firm Name]* to handle my case in place of *[Affected Attorney]*.

[Client Name] *[Date]*

OFFICE CLOSURE FILE TRACKING CHART

File Name	File #	Received	Discussed with Client	Instructions	Copied Date to New Attorney	Other Action Required	Receipt Received & Filed



CLIENT'S REQUEST FOR FILE

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

[Address]

[Client Name]

[Date]

CLIENT'S AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

[*Address*]

[*Client Name*]

[*Date*]

CLIENT'S ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of *[Firm/Attorney Name]*. I also understand and agree that the law office of *[Firm/Attorney Name]* will take no further action on my behalf in this matter.

[Client Name]

[Date]

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART V.

APPOINTMENT OF TRUSTEE WHEN NO ASSISTING ATTORNEY HAS BEEN ARRANGED

Applicable North Carolina State Bar Rule	74
North Carolina State Bar Sample Letter to Trustee	75
Verified Petition for Order Appointing Trustee of Deceased Attorney's Law Practice	78
Order Appointing Trustee of Deceased Attorney's Law Practice	81
Petition for Order Discharging Trustee of Deceased Attorney's Law Practice	84
Order Discharging Trustee	86
Notice of Hearing	89

APPLICABLE NORTH CAROLINA STATE BAR RULE

NORTH CAROLINA ADMINISTRATIVE CODE

Title 27. STATE BAR

Chapter 01. RULES AND REGULATIONS FOR THE NORTH CAROLINA STATE BAR

Subchapter B. DISCIPLINE AND DISABILITY RULES

§ .0126. APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN ATTORNEY DISAPPEARS, DIES, OR IS TRANSFERRED TO DISABILITY INACTIVE STATUS

- (a) Appointment by Senior Resident Judge — Whenever a member of the North Carolina State Bar has been transferred to disability inactive status, disappears, or dies and no partner or other member of the North Carolina State Bar capable of protecting the interests of the attorney's clients is known to exist, the senior resident judge of the superior court in the district of the member's most recent address on file with the North Carolina State Bar, if it is in this state, will be requested by the secretary to appoint an attorney or attorneys to inventory the files of the member and to take action to protect the interests of the member and his or her clients.
- (b) Disclosure of Client Information — Any member so appointed will not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such files relate except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

History Note: Authority G.S. 84-23; 84-28(j);

Readopted Eff. December 8, 1994.

Amendments Approved by the Supreme Court: September 22, 2016

Property of the North Carolina State Bar

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 do so.

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

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ COUNTY
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
[JUDICIAL DISTRICT #]
FILE #IN RE: [ATTORNEY NAME],
ATTORNEY AT LAW**VERIFIED PETITION FOR ORDER
APPOINTING TRUSTEE OF DECEASED
ATTORNEY'S LAW PRACTICE**

Pursuant to N.C. Gen. Stat. § 84-28 and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0126 of the Discipline & Disability Rules of the North Carolina State Bar, the North Carolina State Bar, by and through its Director, petitions and requests the Resident Superior Court Judge of the [Judicial District #] District to enter an order appointing a member of the Judicial District Bar to serve as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name] due to [his/her] death. In support of this petition, the North Carolina State Bar shows the Court as follows:

1. According to the records of the North Carolina State Bar, [Mr./Ms.] [Attorney Last Name] was licensed to practice law [date of license]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] practiced law in [County Name] County, North Carolina.
2. According to the records of the North Carolina State Bar, the last address of record for [Mr./Ms.] [Attorney Last Name] is [address].
3. [Mr./Ms.] [Attorney Last Name] died on or around [date of death].
4. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of winding down [his/her] law practice and ensuring that the interests of [his/her] clients and/or former clients are protected.
5. On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of [Mr./Ms.] [Attorney Last Name]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of carrying out [his/her] obligations under Rules 1-15.1 and 1-15.2 under the Revised Rules of Professional Conduct.
6. [Trustee Name], an attorney licensed to practice in North Carolina and a member in good standing of [Judicial District #] Bar, has indicated that [he/she] is willing to serve as trustee of the North Carolina law practice of [Mr./Ms.] [Attorney Last Name], pursuant to Section .0126 of the Discipline & Disability Rules of the North Carolina State Bar, for purposes of protecting the interests of [Mr./Ms.] [Attorney Last Name]'s clients.
7. [Trustee Name]'s mailing address is: [Trustee's Address].

WHEREFORE, the Petitioner prays for:

1. An order appointing [*Trustee Name*], an attorney licensed to practice in North Carolina and a member in good standing of the [*Judicial District #*] Judicial District Bar, to serve as trustee of the law practice of [*Mr./Ms.*] [*Attorney Last Name*], and authorizing [*Trustee Name*] (hereafter "the Trustee") to gain possession of [*Mr./Ms.*] [*Attorney Last Name*]'s client files, to secure [*Mr./Ms.*] [*Attorney Last Name*]'s trust and/or fiduciary accounts, to gain possession of [*Mr./Ms.*] [*Attorney Last Name*]'s attorney trust and/or fiduciary account records (including all bank statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards) and to take such actions as are necessary to protect the interests of the clients and/or former clients of [*Mr./Ms.*] [*Attorney Last Name*]; and
2. For such other and further relief as the Court deems appropriate.

Respectfully submitted, this the _____ day of _____, 20_____.

Executive Director
N.C. State Bar
217 East Edenton Street,
Raleigh, NC 27601
(919) 828-4620

VERIFICATION

I, _____, after being first duly sworn, depose and say as follows:

- 1. I am the Executive Director of the North Carolina State Bar.
- 2. As Executive Director of the North Carolina State Bar, I am an official custodian of the records of the North Carolina State Bar.
- 3. As an official custodian of the records, I hereby certify that the records of the North Carolina State Bar reflect the facts attributed to those records set forth in the foregoing Petition.
- 4. I hereby certify that the facts set forth upon information and belief are believed to be true by the Petitioner.
- 5. I hereby indicate my request for the appointment of an attorney licensed to practice law in North Carolina as trustee for the law practice of deceased attorney, [Mr./Ms.] [Attorney Last Name], to gain possession of [Mr./Ms.] [Attorney Last Name]'s client files, to secure [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary accounts, to gain possession of [Mr./Ms.] [Attorney Last Name]'s attorney trust and/or fiduciary account records and funds, and to protect the interests of [his/her] clients and/or former clients.

This the _____ day of _____, 20_____.

 Executive Director
 N.C. State Bar

I, _____, a Notary Public of the County and State aforesaid mentioned, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 20_____.

 [Notary Public]

My commission expires: _____



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ COUNTY
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
[JUDICIAL DISTRICT #]
FILE #

IN RE: [ATTORNEY NAME],
ATTORNEY AT LAW

**ORDER APPOINTING TRUSTEE
OF DECEASED ATTORNEY'S
LAW PRACTICE**

THIS CAUSE coming before the Resident Superior Court Judge of the [Judicial District #] District, pursuant to N.C. Gen. Stat. § 84-28 and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0126 of the Discipline & Disability Rules of the North Carolina State Bar, upon the verified petition of the North Carolina State Bar for an order appointing a Trustee of the law practice of [Attorney Name], owing to [his/her] death, and based upon the petition before the Court, the undersigned makes the following:

FINDINGS OF FACT

1. According to the records of the North Carolina State Bar, [Mr./Ms.] [Attorney Last Name] was licensed to practice law [date of license]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] practiced law in [County Name] County, North Carolina.
2. According to the records of the North Carolina State Bar, the last address of record for [Mr./Ms.] [Attorney Last Name] is [address].
3. [Mr./Ms.] [Attorney Last Name] died on or around [date of death].
4. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of winding down [his/her] law practice and ensuring that the interests of [his/her] clients and/or former clients are protected.
5. On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of [Mr./Ms.] [Attorney Last Name]. At the time of [his/her] death, [Mr./Ms.] [Attorney Last Name] had no partners or associates capable of carrying out [his/her] obligations under Rules 1-15.1 and 1-15.2 under the Revised Rules of Professional Conduct.
6. [Trustee Name], an attorney licensed to practice in North Carolina and a member in good standing with the [Judicial District #] Judicial District Bar, has indicated that he/she is willing to serve as trustee of the North Carolina law practice of [Mr./Ms.] [Attorney Last Name], pursuant to Section .0126 of the Discipline & Disability Rules of the North Carolina State Bar, for purposes of protecting the interests of [Mr./Ms.] [Attorney Last Name]'s clients.

7. [Trustee Name]'s mailing address is: [Trustee's Address].

**BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned makes the following:
CONCLUSIONS OF LAW**

1. The Court has jurisdiction over this cause pursuant to N.C. Gen. Stat. § 84-28
2. [Attorney Name] has died and has no partners or associates, necessitating the appointment of a member of the [Judicial District #] Judicial District Bar as trustee of [Mr./Ms.] [Attorney Last Name]'s law practice, to gain possession of [Mr./Ms.] [Attorney Last Name]'s client files, to secure [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary accounts, to gain possession of [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary account records (including all bank statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards), and to take such actions as are necessary to protect the interests of the clients and/or former clients of [Mr./Ms.] [Attorney Last Name].

THE COURT THEREFORE ORDERS THAT:

1. [Trustee Name], an attorney licensed to practice law in North Carolina and a member in good standing with the [Judicial District #] Judicial District Bar, is hereby appointed trustee of the law practice of [Attorney Name].
2. As Trustee, [Trustee Name] is authorized to take such actions as are necessary to obtain possession of any known client files of [Mr./Ms.] [Attorney Last Name] and shall notify [Mr./Ms.] [Attorney Last Name]'s clients of [his/her] death and their need to obtain new counsel. [His/Her] duties as Trustee shall include receiving calendar notices and moving for appropriate continuances in the various courts; returning files to [Mr./Ms.] [Attorney Last Name]'s clients and/or former clients; obtaining all records related to [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary account(s); supervising the disbursement of funds from any trust and/or fiduciary accounts to the appropriate persons; and any other act necessary to wind down [Mr./Ms.] [Attorney Last Name]'s practice and protect the interests of [Mr./Ms.] [Attorney Last Name]'s clients until all known clients have secured other legal counsel, have chosen to pick up their files and have received all money held in trust for their benefit. As Trustee [Trustee Name] is authorized to take such actions as are necessary to identify [Mr./Ms.] [Attorney Last Name]'s trust and fiduciary accounts, as such accounts are defined in Rules 1.15-1 and 1.15-2 of the Revised Rules of Professional Conduct, and to obtain possession of [Mr./Ms.] [Attorney Last Name]'s trust account and fiduciary account records. As Trustee, [Trustee Name] shall take such actions as are necessary 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. As Trustee, [Trustee Name] shall maintain adequate accounts of the funds held in [Mr./Ms.] [Attorney Last Name]'s attorney trust or fiduciary accounts and shall account to the Court for approval annually or at the completion of the disbursement of the funds. [He/She] shall be discharged as Trustee upon the completion of [his/her] duties.
3. As Trustee, [Trustee Name] is hereby authorized to take such actions as are necessary to secure [Mr./Ms.] [Attorney Last Name]'s trust and fiduciary accounts, including, but not limited to, executing new directives regarding signatory authority over such accounts. As Trustee, [Trustee Name] is also authorized to obtain records relevant to [Mr./Ms.] [Attorney Last Name]'s attorney trust and/or fiduciary accounts from all financial institutions where accounts in which funds of client or fiduciary funds have been or are deposited by or in the

name of [Mr./Ms.] [Attorney Last Name], and to execute authorizations directing such financial institutions to release copies of all relevant records relating to such accounts to representatives of the North Carolina State Bar.

4. This cause is retained for further orders of this Court.

This the _____ day of _____, 20_____.

Resident Superior Court Judge
[Judicial District #] District

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ COUNTY
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
[JUDICIAL DISTRICT #]
FILE #IN RE: [ATTORNEY NAME],
ATTORNEY AT LAW**PETITION FOR ORDER
DISCHARGING TRUSTEE OF DECEASED
ATTORNEY'S LAW PRACTICE**

NOW COMES, [Trustee Name], Trustee of the law practice of [Attorney Name] ("Trustee"), and petitions the Court for an order discharging [him/her] as trustee of the law practice of [Mr./Ms.] [Attorney Last Name]. In support of the petition, the Trustee respectfully shows:

1. On [date], upon motion of the N.C. State Bar, the Court appointed [Trustee Name], as Trustee-Conservator of the law practice of [Attorney Name] for the purpose of obtaining possession of files belonging to [Mr./Ms.] [Attorney Last Name]'s clients, securing funds held in [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary accounts, obtaining [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of [Mr./Ms.] [Attorney Last Name].
2. The undersigned Trustee has now taken all reasonable steps within [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr./Ms.] [Attorney Last Name]. [He/She] has returned or attempted to return all client files to their rightful owners. [He/She] has secured funds held in [Mr./Ms.] [Attorney Last Name]'s trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.
3. The undersigned Trustee has reviewed [Mr./Ms.] [Attorney Last Name]'s clients' files. An inventory of the client files is attached as Exhibit A.
4. The undersigned Trustee has distributed files to a number of clients and/or former clients of [Mr./Ms.] [Attorney Last Name]. A list of the files which have been returned to [Mr./Ms.] [Attorney Last Name]'s clients is attached hereto as Exhibit B.
5. A number of [Mr./Ms.] [Attorney Last Name]'s clients have not picked up their files, despite receiving notice from the Trustee to do so. *[Add description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients. For example: The Trustee now has in his/her possession <number of files> closed client files wherein he/she has written the respective clients and has received no instructions regarding the storage or return of the files].* A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.

6. Some disposition needs to be made of the remaining files of [Mr./Ms.] [Attorney Last Name]'s former clients. [Add any proposal for storage or disposition of files. For example: The Trustee has indicated that <he/she> is willing to store the remaining closed files at <his/her> law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging <him/her> as Trustee, at which time <he/she> would destroy any unclaimed files.]
7. The undersigned Trustee has disbursed all funds from any trust and/or fiduciary accounts held by [Mr./Ms.] [Attorney Last Name] to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.
8. [If there is any unclaimed money, it must be reported to the Court].
9. The undersigned Trustee has submitted a summary of [his/her] time and expenses incurred in serving as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name]. The summary of [his/her] time and expenses is attached hereto as Exhibit E. In carrying out [his/her] duties as Trustee-Conservator, the undersigned Trustee has provided services and incurred expenses in the total amount of [dollar amount].

WHEREFORE, the undersigned Trustee respectfully requests the Court to enter an order as follows:

1. Discharging [him/her] as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name];
2. Allowing [him/her] to retain the unclaimed files of clients of [Mr./Ms.] [Attorney Last Name] for one year following the date of this order, after which time [he/she] should be authorized to destroy any files of clients of [Mr./Ms.] [Attorney Last Name] that remain unclaimed [or alternative proposal]; and
3. Finding that [he/she] is entitled to reasonable compensation for [his/her] services as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name] and reimbursement of expenses incurred while serving as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name] in the amount of [dollar amount].

This the _____ day of _____, 20_____.

Trustee of the Law Practice of [Mr./Ms.] [Attorney Last Name]

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ COUNTY
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
[JUDICIAL DISTRICT #]
FILE #IN RE: [ATTORNEY NAME],
ATTORNEY AT LAW**ORDER DISCHARGING TRUSTEE**

THIS MATTER coming on to be heard and being heard by the undersigned Senior Resident Superior Court Judge of the [Judicial District #] District upon the motion of the Trustee herein for an order discharging [him/her] as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name], the Court makes the following:

FINDINGS OF FACT

1. On [date], upon motion of the N.C. State Bar, the Court appointed [Trustee Name], as Trustee- Conservator of the law practice of [Attorney Name] for the purpose of obtaining possession of files belonging to [Mr./Ms.] [Attorney Last Name]'s clients, securing funds held in [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary accounts, obtaining [Mr./Ms.] [Attorney Last Name]'s trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of [Mr./Ms.] [Attorney Last Name].
2. [Trustee Name], Trustee of the law practice of [Mr./Ms.] [Attorney Last Name], has now taken all reasonable steps within [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr./Ms.] [Attorney Last Name]. [He/She] has returned or attempted to return all client files to their rightful owners. [He/She] has secured funds held in [Mr./Ms.] [Attorney Last Name]'s trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.
3. [Trustee Name] has reviewed [Mr./Ms.] [Attorney Last Name]'s clients' files. An inventory of the client files is attached as Exhibit A.
4. [Trustee Name] has distributed files to a number of clients and/or former clients of [Mr./Ms.] [Attorney Last Name]. A list of the files which have been returned to [Mr./Ms.] [Attorney Last Name]'s clients is attached hereto as Exhibit B.
5. A number of [Mr./Ms.] [Attorney Last Name]'s clients have not picked up their files, despite receiving notice from the Trustee to do so. [Add description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients. For example: <Trustee Name> now has in <his/her> possession <number of files> closed client files wherein <he/she> has written the respective clients and has received no instructions regarding the storage or return of the files]. A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.

6. Some disposition needs to be made of the remaining files of [Mr./Ms.] [Attorney Last Name]'s former clients. *[Add any proposal for storage or disposition of files. For example: <Trustee Name> has indicated that <he/she> is willing to store the remaining closed files at <his/her> law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging <him/her> as Trustee, at which time <he/she> would destroy any unclaimed files.]*
7. [Trustee Name] has disbursed all funds from any trust and/or fiduciary accounts held by [Mr./Ms.] [Attorney Last Name] to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.
8. [If there was any unclaimed money, its disposition must be described here].
9. [Trustee Name] has submitted a summary of [his/her] time and expenses incurred in serving as Trustee of the law practice of [Mr./Ms.] [Attorney Last Name]. The summary of [his/her] time and expenses is attached hereto as Exhibit E. In carrying out [his/her] duties as Trustee-Conservator, the undersigned Trustee has provided services and incurred expenses in the total amount of [dollar amount].

Based upon the foregoing FINDINGS OF FACT, the Court enters the following: CONCLUSIONS OF LAW

1. [Trustee Name], Trustee of the law practice of [Mr./Ms.] [Attorney Last Name], has taken all reasonable steps in [his/her] power to fulfill [his/her] obligations as Trustee-Conservator of the law practice of [Mr./Ms.] [Attorney Last Name], to obtain the return of all client files, and to disburse all funds in [Mr./Ms.] [Attorney Last Name]'s trust or fiduciary accounts.
2. [Trustee Name] is entitled to an order discharging [him/her] as Trustee-Conservator of the law practice of [Mr./Ms.] [Attorney Last Name].
3. [Trustee Name] is entitled to reasonable compensation for [his/her] services rendered and reimbursement of expenses incurred while serving as Trustee-Conservator of [Mr./Ms.] [Attorney Last Name]'s law practice in the amount of [dollar amount].
4. [Trustee Name] should be authorized to *[add provision regarding disposal of any remaining client files, as proposed by Trustee in petition seeking discharge and approved by the Court]*.

WHEREFORE it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. [Trustee Name] is hereby discharged as Trustee-Conservator of the law practice of [Mr./Ms.] [Attorney Last Name].
2. *[Provision regarding disposal of files as stated above. For example: <Trustee Name> is hereby authorized to maintain in storage at <his/her> law office for a period of one year from the date of this order those closed client files that have not yet been retrieved by the clients of <Mr./Ms.> <Attorney Last Name>, after which <he/she> is authorized to destroy any files of clients of <Mr./Ms.> <Attorney Last Name> that remain unclaimed, after making a reasonable attempt to remove from said files any original documents that may have*

independent legal significance, such as original wills and stock certificates and the like. <Trustee Name> shall retain any such original documents at <his/her> law office for a period of <number of years> years, at which time <he/she> is authorized to destroy all unclaimed documents.]

3. [Trustee Name] is entitled to reasonable compensation for [his/her] services as Trustee for the law practice of [Mr./Ms.] [Attorney Last Name] and reimbursement for expenses incurred by [him/her] while serving as Trustee in the amount of [dollar amount]. Said compensation and expenses are to be paid by the Estate of [Mr./Ms.] [Attorney Last Name], pursuant to N.C. Gen. Stat. § 84-28, as an administrative expense of the Estate upon presentation of this Order.

This the _____ day of _____, 20_____.

Resident Superior Court Judge
[Judicial District #] District



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ COUNTY
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
[JUDICIAL DISTRICT #]
FILE #

IN RE: [ATTORNEY NAME],

NOTICE OF HEARING

To: *[Give notice to State Bar and Estate of <Attorney Name>]*

Take notice that the undersigned [*Trustee Name*], Trustee for law practice of [*Mr./ Ms.*] [*Attorney Last Name*], will appear before the Superior Court, [*County Name*] County on [*date*] at [*time*] in Courtroom [*courtroom #*] of the [*County Name*] County Courthouse for a determination of [*his/her*] motion seeking discharge as Trustee for the law practice of [*Mr./ Ms.*] [*Attorney Last Name*], a [*deceased/disabled/disbarred*] attorney [*or: an attorney who abandoned <his/her> law practice*], and for the determination of reasonable compensation for [*his/her*] services rendered and reimbursement of expenses incurred while serving as Trustee of [*Mr./ Ms.*] [*Attorney Last Name*]'s law practice.

[In the event of death, use:

Said compensation and expenses are deemed administrative expenses of the Estate of <*Mr./Ms.*> <*Attorney Last Name*>, pursuant to N.C. Gen. Stat. § 84-28.]

This the _____ day of _____, 20_____.

[*Trustee Name*]
Trustee of the Law Practice of [*Mr./Ms.*] [*Attorney Last Name*]

***Table of Contents interactive. Click the title to automatically navigate to page.*

PART VI

THE “OF COUNSEL” RELATIONSHIP, AND OTHER WAYS TO RESET, REINVENT, AND STAY ENGAGED!

“Of Counsel”: Considerations and Agreements	92
Other Ways to Reset, Reinvent, and Stay Engaged!	96

“OF COUNSEL”: CONSIDERATIONS AND AGREEMENTS

CONTEXT

Whether you are moving back into private practice after a government position, from the bench, or in-house position; looking to reduce your responsibilities and hours; or this transition comes as part of the sale of your practice, an “of counsel” position may be right for you. But what does “of counsel” mean and what steps should you take to protect yourself and identify your role?

At least as early as the late 1980s, North Carolina lawyers have been making [ethical inquiries](#) into the appropriate use of the “of counsel” terminology and relationship.

The North Carolina State Bar provides a good overview in its Rule of Professional Conduct ([“RPC”](#)) [85](#):

Over the years there has been a proliferation of variants of the term “of counsel,” generally where there is a holding out to the world at large about some general and continuous relationship between the lawyers and law firms in question. In RPC 34, it was recognized that the term could be properly applied to a relationship characterized as a “close, in-house association,” suggesting, perhaps, that lawyers and firms in different towns should not use the term “of counsel” to describe their relationship. However, the appropriateness of the “of counsel” designation does not turn solely upon the location of the parties’ offices, nor does it turn solely on the amount of time spent in those offices. Rather, the “of counsel” designation (or one of its variants) is appropriate when there is a close, regular and personal relationship between the lawyer and the law firm. Thus, relationships that involve only one case or matter, that involve only occasional collaborative efforts among otherwise unrelated lawyers or firms, or that primarily involve only the forwarding of legal business would not satisfy the requirements for the use of the “of counsel” appellation. The critical consideration is the nature of the relationship and the adherence to the rules applicable to conflicts of interest and confidential information. In no event may “of counsel” be used unless the usage is consistent with the rules pertaining to false and misleading communications (Rule 2.1) or firm names and letterheads (Rule 2.3). Any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must also be indicated.

Although you may not be clear what an “of counsel” status means for you, there are some components to steer clear of and some components you must include. From there, as with many professional relationships, talk, listen, and memorialize the agreement.

At first, when a North Carolina law firm chose an “of counsel” relationship, [RPC 34](#) required the “of counsel” attorney (1) be licensed in North Carolina; (2) have a close, in-house association with the firm; and (3) that there be no conflicts of interest between the attorney and the firm.

A few years later, pursuant to RPC 85 (adopted in 1991), the “in-house” requirement was eliminated. Since its adoption, an “of counsel” relationship can be formed between lawyers practicing in different towns, provided the designation is not otherwise false and misleading. Still, the relationship must be close, regular and personal, and must not involve conflicts of interest. In addition, both the lawyer and the firm should remain mindful of the treatment of confidential information.

The last sentence of RPC 85, as included above, reads: “Any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must also be indicated.” RPC 85 does not explicitly overrule RPC 34; however, it is probably no longer necessary that an “of counsel” lawyer be licensed in North Carolina, as long as the other requirements of RPC 34 and RPC 85 are met and particularly that the jurisdictional limitations on the lawyer’s entitlement to practice are indicated as part of the “Of Counsel” designation. You should also consult [RPC 25](#) and [RPC 126](#).

REGARDING LETTERHEAD DESIGNATIONS.

In addition to North Carolina’s ethics opinions, [ABA Formal Opinion 90-357](#), based on the Model Rules of Professional Conduct, is a thorough treatment of the subject and provides excellent guidance. As adopted May 10, 1990, it begins:

“The use of the title ‘of counsel’ or variants of that title, in identifying the relationship of a lawyer or law firm with another lawyer or firm is permissible as long as the relationship between the two is a close, regular, personal relationship and the use of the title is not otherwise false or misleading.”

The American Bar Association outlined in [Formal Opinion 90-357](#) four patterns of relationships that are properly referred to as “of counsel”:

- “(A) part-time practitioner who practices law in association with a firm, but on a basis different from that of the mainstream lawyers in the firm. Such part-time practitioners are sometimes lawyers who have decided to change from a full-time practice, either with that firm or with another, to a part-time one, or sometimes lawyers who have changed careers entirely, as for example former judges or government officials.” This may also include attorneys who transition from corporate/in-house practice to law firm practice.
- “(A) retired partner of the firm who, although not actively practicing law, nonetheless remains associated with the firm and available for occasional consultation.”
- “(A) lawyer who is, in effect, a probationary partner-to-be: usually a lawyer brought into the firm laterally with the expectation of becoming partner after a relatively short period of time.”
- “(A) permanent status in between those of partner and associate—akin to the category just described, but having the quality of tenure, or something close to it, and lacking that of an expectation of likely promotion to full partner status.”

Combining RPC 34, RPC 85 and ABA Formal Opinion 90-357, the ethical requirements for an “of counsel” relationship are:

- There must be a close, regular and personal relationship between the “of counsel” lawyer and the firm.
- The relationship must not involve conflicts of interest.
- The title must not be otherwise false or misleading.
- If the “of counsel” lawyer is not licensed in North Carolina, any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must be indicated.

Just as important in the ABA Formal Opinion 90-357 are the professional relationships that are not ethically permissible to be designated “of counsel”:

- A relationship involving only an individual case;
- A relationship of forwarder or receiver of legal business;
- A relationship involving only occasional collaborative efforts among otherwise unrelated lawyers or firms; and
- The relationship of an outside consultant.

If you, either as the firm or the attorney, are considering an “of counsel” relationship, a written agreement is advisable. A great checklist is found in [OF COUNSEL AGREEMENTS](#), one of many Risk Management Practice Guides found on the Lawyers Mutual website (<https://www.lawyersmutualinc.com/risk-management-resources/risk-management-handouts>). That checklist is the basis for the one that follows:

- License status of the “of counsel” lawyer
- Title and status of the “of counsel” lawyer
 - for instance, employee or contractor or something else
- The duties of the “of counsel” lawyer
 - primary attorney or supporting
 - billing/invoicing
- Limitations on the authority of the “of counsel” lawyer
 - can the “of counsel” attorney bind the law firm
 - matter of imputed vicarious liability
- Compensation of the “of counsel” lawyer
 - salaried vs. contractor vs. per case
- Division of firm overhead
 - Responsibility for rent/utilities/staffing costs and the like
- Fringe benefits
 - health insurance/retirement benefits/paid time off
- Responsible for malpractice coverage for the “of counsel” lawyer
- Termination of the “of counsel” relationship
 - when and how
 - file retention
- Status of the existing case load of the “of counsel” lawyer before becoming “of counsel” to the firm
 - handling of pending cases if existing practice is being shut down or sold to third party, how to handle file

- Responsibility of trust account requirements
 - handling of trust account funds
- Retainer agreements
 - drafting considerations

This checklist will not only help in the drafting of an agreement but provide additional considerations for the relationship.

Lastly, if either the “of counsel” attorney or the firm is licensed in a state other than North Carolina, the ethical considerations of that other state must be taken into consideration and evaluated.

For instance, the State Bar of California has published [Formal Opinion No. 1986-88](#) which addresses fee splitting rules in addition to other considerations mentioned in this article.

See also, regarding fee splitting, [State Bar of California Rule 1.5.1 Fee Divisions Among Lawyers](#).

Likewise, The [Florida Bar has a packet](#) put together on the “of counsel” relationship. Although those ethical considerations are going to apply only to attorneys licensed in Florida, there are some interesting thoughts.

Certainly, a good internet search will provide additional resources, but here are a few worth sharing.

- Lawyers Mutual Website has several articles <https://www.lawyersmutualinc.com/search?keywords=of+counsel>
- The Bar Plan Website <https://www.thebarplan.com> contains a 3-part series on considerations in the [Of Counsel Relationships](#).
- ALPS Insurance Co. has a few good articles about the “Of Counsel” relationship on its website <https://blog.alpsinsurance.com/?s=of+counsel>
- The Of Counsel Agreement: A Guide for Law Firm and Practitioner Paperback – July 6, 2005 by Harold G. Wren (Author), Beverly J. Glascock (Author) can be purchased on Amazon and borrowed from the Lawyers Mutual lending library.

OTHER WAYS TO RESET, REINVENT, AND STAY ENGAGED!

Despite the flexibility an “of counsel” relationship offers, maybe your talent as a provider of legal services is not what you want to draw on as you wind down. During your career you learned lessons, gathered legal knowledge, sometimes felt the need to take up a cause. Now might be the time to put those qualities to use and connect with your fellow lawyers in a different relationship. While doing so, you might help shape the legal practice experience for those around you.

Following are just some thoughts on ways to make an impact, further camaraderie within the Bar, share your experience and find new ways to connect with others. Included are links to some of the applicable rules, websites and information.

BECOME A MEDIATOR OR ARBITRATOR

[Rule 1.12](#): Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral

[Rule 2.4](#): Lawyer Serving as Third-Party Neutral

EMERITUS PRO BONO STATUS FOR INACTIVE MEMBERS

<https://www.ncbar.gov/media/283904/Petition-For-Emeritus-Pro-Bono-Status-For-Inactive-Members.pdf>

The Information for Petitioners for Emeritus Pro Bono Status for Inactive Members provides in part:

Guidelines For In-Court Practice

A lawyer who has been granted Pro Bono Practice Status pursuant to either 27 N.C.A.C. 1D, Rule .0905(b)(3), *Pro Bono Practice by Out of State Lawyers*, or 27 N.C.A.C. 1D, Rule .0901(b)(3), *Emeritus Pro Bono Status*, may engage in the following activities under the supervision of an active member of the North Carolina State Bar:

- (a) A lawyer with Pro Bono Practice Status may give advice to a client on matters of North Carolina law provided (1) the lawyer gives a clear prior explanation to the client that the lawyer’s practice in North Carolina is limited to pro bono matters and (2) the supervising lawyer has determined that the pro bono lawyer is qualified to render legal advice in the subject area involved.
- (b) A lawyer with Pro Bono Practice Status may represent an eligible person in any proceeding before a federal, state, or local tribunal, including an administrative agency, if notice of pro bono status is given to the tribunal or agency by the pro bono lawyer and the supervising lawyer approved the representation. A statement advising the tribunal or agency of the lawyer’s Pro Bono Practice Status shall be filed with the tribunal and made a part of the record in the case. The State Bar Council’s Order granting Pro Bono Practice Status may be used for this purpose.
- (c) The pro bono lawyer’s appearance before a tribunal or agency shall be subject to any limitations imposed by the tribunal or agency.
- (d) In all cases under this rule in which a lawyer with Pro Bono Practice Status is permitted to appear before a tribunal or agency, subject to any limitations imposed by the tribunal, the lawyer may engage in all activities appropriate

to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

Statutory Authority: N. C. Gen. Stat. §84-16; and N. C. Gen. Stat. §84-7.1

VOLUNTARY PRO BONO SERVICE

Rule 6.1: VOLUNTARY PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.

<https://ncprobono.org/>

NC APPELLATE PRO BONO PROGRAM

<https://ncprobono.org/appellate/>

MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

Rule 6.3: Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interest adverse to a client of the lawyer.

MENTOR A YOUNG LAWYER OR LAW STUDENT

2014 Formal Ethics Opinion 1

February 1, 2016

Protecting Confidential Client Information When Mentoring

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-1/>

SERVE ON COMMITTEES OF THE NORTH CAROLINA BAR ASSOCIATION

<https://www.ncbar.org/members/communities/committees/>

PROVIDE CONTINUING LEGAL EDUCATION PROGRAMS

WRITE ARTICLES FOR NORTH CAROLINA BAR ASSOCIATION SECTION PUBLICATIONS

VOLUNTEER FOR THE STATE BAR SPEAKERS BUREAU

TEACH A CLASS AT A LAW SCHOOL, COLLEGE, OR COMMUNITY COLLEGE

VOLUNTEER AS A GUARDIAN AD LITEM

PART VII.

ATTORNEY PERSPECTIVES – YESTERDAY, TODAY, AND TOMORROW

CONTEXT

Along our journey as legal professionals, the perspectives of others can help us make a plan for the next stage(s) of living while lawyering. If you are thinking about changes to improve your personal or professional life, Part VII offers viewpoints from legal professionals of varied experiences - no instructions and no “nuts and bolts,” just food for thought.

A seasoned litigator provides his 25-year-old self with sage advice about living while lawyering: “Note to My Younger Self,” by Coleman Cowan	100
Perspectives learned and passed on for consideration to experienced legal professionals: “Where Am I And Where Am I Going?” by Celia Pistolis	102
Thoughts for legal professionals worried about giving up the well-earned prestige of a practicing lawyer: “What Is Your `Blue Chair’” by Mark Scruggs	104

A seasoned litigator provides his 25-year-old self with sage advice about living while lawyering

A Note To My Younger Self

by Coleman Cowan

Life is a journey. We all learn from our experiences. And if we're paying attention, we become better people and lawyers not only from our successes, but also from our failures. When I first started practicing, I made an effort to soak up as much knowledge and insight as I could from older, more experienced lawyers. Now that I'm one of them, I've taken on mentoring roles to help young lawyers just beginning to practice. If I'm honest, more time has passed than I would like to admit, but I still remember what it was like to be young, inexperienced, and fighting for my place at the table.

What appears below is a note to my younger self, with a bit of knowledge and experience I gained since I started practicing law more than 25 years ago. The idea was to help young lawyers – and maybe some not so young – learn from the experience of others, and perhaps come to terms a bit with the stress and pressure of being a new lawyer finding your way in an adversarial profession, whether in a transactional or a litigation practice.

A complete list of guidance would be endless, and there are likely as many good pieces of advice as there are practicing lawyers in the state. What appears below is in part unique to my experience, but also broad enough that others might benefit.

Dear Coleman,

Congratulations. You are 25 years old, with three hard-fought years of law school behind you, and a world of opportunity ahead. All the long hours you spent struggling to make sense of the law and understand how it works are about to pay off. Your hard work is soon to be rewarded with a career filled with even more hard work, mounting stress, and greater challenges – both personal and professional – than you've ever faced. There will be times when you will doubt yourself and the decisions you've made. But if you follow these simple rules, everything else will fall into place.

Be prepared. No matter what you are doing, and no matter how many times you've done it before, always be prepared. Know the details of your case. Read the caselaw and understand how it works for you as well as against you. Let this be your motivation: If you are the most prepared person in the room, you will have an advantage over everyone. Knowledge will always overcome inexperience. And preparation will fuel that knowledge.

Be confident. For many years you will be the youngest, greenest, least experienced lawyer involved in every case you handle. Know that. Appreciate that. But do not let it limit you. Some lawyers will try to take advantage of it. Don't let them. Be confident in everything that got you to where you are. And be confident in your preparation (see Rule # 1). Do that and you will understand that the number of years of your experience does not matter nearly as much as how you use them.

Pay attention to other lawyers. You will practice with and against effective lawyers, just as you will practice with and against ineffective lawyers. It will be easy to tell the difference, and you can learn a great deal from both. Teach yourself good habits and techniques, as well as the things you should never do.

Be self-aware. Effective lawyers make it look easy. They have a command over the facts and the law. Understand that despite appearances, it is never easy, and never will be. It only looks that way because those lawyers have followed the first three rules.

Don't be afraid to fail. Most people focus on the endpoint rather than the journey. Their focus on getting to the top, winning, or being the best, prevents them from taking risks, which means they will never reach their goal. If you don't take risks, you will not grow. But understand that you will fail. Many times. When that happens, own your failures. But learn from them. That is what will make you grow, both as a lawyer, and as a person. Think about your greatest success and your biggest failure. Which one did you learn more from? I bet it's not the one that made you feel good. Failing is natural. Not learning from it is inexcusable.

Learn to overcome adversity. You have chosen a career grounded in the adversary system. Everything will be a challenge, and you will be faced with adversity every day of your career. Learn to overcome it. Do not let it consume you. Beyond your career, you will be faced with extraordinary adversity in your personal life. In a few short years, a bullet will change your life and teach you that every day is a gift. Always remember that. And know that Nietzsche had it right when he said, "What doesn't kill me, makes me stronger."

Learn to be a good writer. Spend an hour reading Strunk and White's *The Elements of Style*. Learn when to use "that" and "which," and when to use "who" and "whom." Spend time reading good, long-form journalism, and pay attention to how journalists tell stories. There is a difference between legal writing you have to read and legal writing you want to read. Learn how to write the second kind.

Never stop learning. Law school didn't teach you the law. It taught you how to teach yourself the law. Law is an evolving concept. No one ever knows the law. You can only master it for a moment. Life is the same way. Stay curious. Never stop learning.

Respect everyone. The staff in your office and every office you visit. Every lawyer you encounter. Every judge and jury you appear in front of. And everyone you meet inside and outside the courtroom. Treat everyone with respect.

You will never find the perfect work/life balance. But that doesn't mean you should ever stop searching for it. Dad always told us, "Keep doing what you're doing." Never forget that, follow these rules, and you will have a long and happy career and life. Take care of yourself, both mind and body, eat your vegetables, and call Mom. And always remember what Dad preached to us. From the gospel according to the brothers Angus and Malcolm Young:

*It's a long way to the top //
if you want to rock 'n' roll.*

Enjoy your life. See you on the other side.

Coleman Cowan
Jan. 24, 2021

Where Am I And Where Am I Going?

by Celia Pistolis

I was shocked to learn that I am a “senior lawyer.” Although I am not quite certain who has the audacity to make this determination, I think it means that I can now give advice to my younger colleagues.

But before you finish your predictable eye roll, let me say that this article is not about giving you advice. I am sure you hear enough advice from all sorts of people: your spouse, your significant other, your best friends, your colleagues, your mentor, your siblings, your parents, your hairstylist/barber, your mechanic, and even strangers.

Rather, this article is about the questions I have asked myself along the way of becoming a lawyer who loves being a legal aid lawyer. I share these questions and my answers to provoke and inspire introspection about achieving a personal level of professional vitality as a lawyer.

Q. What kind of lawyer do I want to be?

This question is a variation of “Who am I?” – a question posed by my high school English teacher during my senior year. How to answer my teacher’s question and the question I pose depends on many factors. Life experiences, culture, education, timing, and values can shape our answers.

This question has some subparts. What are my professional goals? How will I achieve those goals? When do I want or expect to achieve those goals? Who can help me? Do I even want to be a lawyer?

- A.** The answer to what kind of lawyer I wanted to be varied somewhat throughout my career. At times, I wanted to be an excellent litigator, a consumer law expert, an inspiring mentor, or a diligent managing attorney. Regardless of the variations that arose over the years, my consistent response has always been to be a lawyer who is trusted. Clients could trust me to provide excellent legal services and to do my best. Colleagues and opposing counsel could trust me to do what I promised. Judges could trust what I had to say about my case and the law. I knew attaining that trust required hard work, commitment, and determination.

Q. Am I in the right place to become the lawyer I want to be?

This question is not the same as “am I happy working at _____.” Liking a job and a workplace is not responsive to this second question. The answer to this question may lead to a change or to a risk – neither of which may be easy. However, I would submit that living with regrets is tougher.

There are harder follow-up questions. Will my employer help me become the lawyer I want to be? Do my expectations and professional goals mirror those of my employer? If not, will I want to make the effort to address those different expectations? Will my employer support my professional goals? Do I want or need to find a different working environment?

- A.** This question required me to look at whether working for legal aid was the right place for me. At times, I explored other offers presented to me or looked at other opportunities. When I did, I decided that I was in the right place to attain my professional goals and be the lawyer I wanted to be. As I look back over the years, I was right.

Q. How will my law practice fit with my personal life?

This is a very hard question. It directly addresses work-life balance or “the amount of time you spend doing your job compared with the amount of time you spend with your family and doing things you enjoy.”¹ The importance of work-life balance is not a new concept and reflects in part the old proverb about all work and no play.² Achieving work-life balance is challenging in light of the competing demands facing each of us daily. Employer policies may encourage work-life balance. Still, the realities of the office culture and client expectations, coupled with a lawyer’s ambitions and an actual caseload may belie the effectiveness of those policies.

Is my work-life balance an equilibrium between the forces of my work and personal life? Does my employer provide me with the flexibility to achieve that equilibrium? Do I want to invest the time and effort to become a trusted lawyer? Am I seesawing between my professional goals and personal life so that my well-being is impacted? Have I accepted that at times, my work-life balance means I will spend more time on work matters to meet my professional goals than personal ones? Am I the one making these decisions?

- A.** As a woman who wanted children, I prioritized my personal decision to have a family over my professional goals. Thirty years ago, my employer’s family-friendly policies provided me with the flexibility to work and have a family by providing, for example, paid maternity leave. However, these family-friendly policies seemed non-existent at times. While I was having children and raising them, I put some of my professional goals on hold. Being a mother, a wife, and a lawyer was extremely difficult. The stress felt overwhelming. I could not and did not have it all. As I learned how to be a better lawyer through the inevitable practice of being one, my children became men. In the long run, my choices have been and continue to be worth the difficulties and the joys I experienced.

As promised, this article has been about questions I asked to reach a personal level of professional vitality that makes me proud and happy to be a lawyer. Are the three questions listed here ones that you are asking or should ask? What are your answers?

1. Definition of “work-life balance,” Cambridge Business English Dictionary (2021), <https://dictionary.cambridge.org>.

2. “All work and no play makes Jack a dull boy.” Howell, James, *Paroimiographia. Proverbs, or, old Sayed Sawes & Adages in English (or the Saxon Tongue) Italian, French and Spanish whereunto the British, for their great antiquity and weight are added*. London: Samuel Thomson (1659).

What Is Your Blue Chair?

by Mark Scruggs



Picture: "Mule" tethered to a blue chair.

What keeps you doing what you are doing? When you think, "I would like to try something new," what stops you? What is your next thought? Is it, "But I can't because ..."

When someone asks me what I do for a living, I say, "I'm a lawyer!" I take pride in my profession. But I'm not a lawyer in the sense that many of you are. Yes, I'm trained and licensed as a lawyer, and I worked hard at practicing law for 14 years. But for the last 20 years, I've worked for an insurance company. A former colleague of mine at Lawyers Mutual, when asked what kind of work he did, would reply, "I work for an insurance company." I can't bring myself to do that! My first response is

always, "I am a lawyer." Being a lawyer and maybe more specifically, calling myself a lawyer, is crucial to me.

I am of a vintage that invites me to think about life after law. You may be, as well. Or, you may be mid-career and feeling like the practice of law is not what you thought and hoped it would be. What holds us back from leaping into some new endeavor that does not involve being a lawyer, and how can we get past that sticking point?

The first thing we have got to get past is our identity crisis. For many of us, our identity, our sense of worth, is inextricably tied to being and calling ourselves a lawyer. Suppose you choose to apply for "inactive status" with the State Bar. In that case, you cannot hold yourself out as a "lawyer," "attorney," "attorney at law," or use any other designation that implies that you are an active attorney who can provide legal services in North Carolina. (That includes giving legal advice regarding North Carolina law.) Is identifying as a lawyer your Blue Chair? Is it mine?

We also must overcome our lawyer-born high degree of pessimism and skepticism. Studies have shown that lawyers rank higher on pessimism and skepticism than other professionals and the general population. These may be positive attributes for law practice, but they may make us more resistant to change and more likely to focus on the potential negatives than positives.

Change your language. Words matter. If you are a "senior lawyer" like me, don't call it "retirement." Call it "transitioning" or your "second season." Your transition will not be your father's retirement. The average American's life expectancy is 78 years. That's up from 70 years in 1960 and 60 years in 1930. You and I have many more years to do something new, different, and fulfilling.

Transition to something and not away from something. Before you make a change, have a plan. How are you going to occupy your time? And don't say, "I'm going to read more and travel more." You might, and I hope you will, but I don't think that's sufficient for most of us. Do you have a social cause or a hobby that you can develop into your passion? If you, like me, don't know what you would do if you couldn't be a lawyer, start working on it now.

Often, the things holding us back from breaking away are all in our heads, just like the poor beast in the picture above. Find out what your Blue Chair is, and don't let it keep you tied down.

APPENDIX — SELECTED RULES AND ETHICS OPINIONS

Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer	107
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-12-scope-of-representation-and-allocation-of-authority-between-client-and-lawyer/	
Rule 1.5 – Fees	108
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-15-fees/	
Rule 1.6 – Confidentiality of Information	110
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-16-confidentiality-of-information/	
Rule 1.7 – Conflict of Interest rules	111
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-17-conflict-of-interest-current-clients/	
Rule 1.8 – Conflict of Interest: Current Clients: Specific Rules	112
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-18-conflict-of-interest-current-clientsspecific-rules/	
Rule 1.9 – Duties to Former Clients	114
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-19-duties-to-former-clients/	
Rule 1.11 – Special Conflicts of Interest for Former and Current Government Officers and Employees	116
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-111-special-conflicts-of-interest-forformer-and-current-government-officers-and-employees/	
Rule 1.12 – Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral	118
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-112-former-judge-arbitratormediator-or-other-third-party-neutral/	
Rule 1.5 – Safekeeping Property	119
• https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-115-safekeeping-property/	

Rule 1.16 – Declining or Terminating Representation	120
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-116-declining-or-terminatingrepresentation/ 	
Rule 1.17 – Sale of A Law Practice	122
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-117-sale-of-a-law-practice/ 	
Rule 5.6 – Restrictions On Right to Practice	123
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-56-restrictions-on-right-topractice/ 	
Rule 7.5 – Firm Names and Letterheads (reserved)	124
Files of A Deceased Lawyer	125
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-16/ 	
Fees for The Collection of “Med-Pay”	127
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-174/ 	
Disposing of Closed Client Files	128
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-209/ 	
Sale of A Law Firm To Lawyers Employed by The Firm	130
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-6/ 	
Guidelines for Fees Paid in Advance	132
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-10/ 	
Duty to Safekeep Client Files Upon Suspension, Disbarment, Disappearance, or Death of Firm Lawyer	139
<ul style="list-style-type: none"> • https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-13/ 	

RULE 1.2

SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-12-scope-of-representation-and-allocation-of-authority-between-client-and-lawyer/>

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
 - (1) A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
 - (2) A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
 - (3) In the representation of a client, a lawyer may exercise his or her professional judgment to waive or fail to assert a right or position of the client.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RULE 1.5

FEES

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-15-fees/>

- (a) A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee or charge or collect a clearly excessive amount for expenses. The factors to be considered in determining whether a fee is clearly excessive include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) a contingent fee for representing a defendant in a criminal case; however, a lawyer may charge and

collect a contingent fee for representation in a criminal or civil asset forfeiture proceeding if not otherwise prohibited by law; or

(2) a contingent fee in a civil case in which such a fee is prohibited by law.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

(f) Any lawyer having a dispute with a client regarding a fee for legal services must:

(1) at least 30 days prior to initiating legal proceedings to collect a disputed fee, notify his or her client in writing of the existence of the North Carolina State Bar's program of fee dispute resolution; the notice shall state that if the client does not file a petition for resolution of the disputed fee with the State Bar within 30 days of the lawyer's notification, the lawyer may initiate legal proceedings to collect the disputed fee; and

(2) participate in good faith in the fee dispute resolution process if the client submits a proper request. Good faith participation requires the lawyer to respond timely to all requests for information from the fee dispute resolution facilitator.

RULE 1.6

CONFIDENTIALITY OF INFORMATION

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-16-confidentiality-of-information/>

- (a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:
 - (1) to comply with the Rules of Professional Conduct, the law or court order;
 - (2) to prevent the commission of a crime by the client;
 - (3) to prevent reasonably certain death or bodily harm;
 - (4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used;
 - (5) to secure legal advice about the lawyer's compliance with these Rules;
 - (6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (7) to comply with the rules of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court; or
 - (8) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
- (d) The duty of confidentiality described in this Rule encompasses information received by a lawyer then acting as an agent of a lawyers' or judges' assistance program approved by the North Carolina State Bar or the North Carolina Supreme Court regarding another lawyer or judge seeking assistance or to whom assistance is being offered. For the purposes of this Rule, "client" refers to lawyers seeking assistance from lawyers' or judges' assistance programs approved by the North Carolina State Bar or the North Carolina Supreme Court.

RULE 1.7

CONFLICT OF INTEREST: CURRENT CLIENTS

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-17-conflict-of-interest-current-clients/>

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

RULE 1.8

CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-18-conflict-of-interest-current-clients-specific-rules/>

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest directly adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
 - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
 - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses, provided the requirements of Rule 1.8(a) are satisfied; and
 - (2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.
- (j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i), that applies to any one of them shall apply to all of them.

RULE 1.9

DUTIES TO FORMER CLIENTS

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-19-duties-to-former-clients/>

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

RULE 1.10

IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-110-imputation-of-conflicts-of-interest-general-rule/>

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
 - (1) the personally disqualified lawyer is timely screened from any participation in the matter; and
 - (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.
- (d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

RULE 1.11

SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-111-special-conflicts-of-interest-for-former-and-current-government-officers-and-employees/>

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
 - (1) the disqualified lawyer is timely screened from any participation in the matter; and
 - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter.
- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
 - (1) is subject to Rules 1.7 and 1.9; and
 - (2) shall not:
 - (A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(B) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and
- (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

RULE 1.12

FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-112-former-judge-arbitrator-mediator-or-other-third-party-neutral/>

- (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.
- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.
- (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
 - (1) the disqualified lawyer is timely screened from any participation in the matter; and
 - (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.
- (d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 1.15

SAFEKEEPING PROPERTY

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-115-safekeeping-property/>

This rule has four subparts: Rule 1.15-1, Definitions; Rule 1.15-2, General Rules; Rule 1.15-3, Records and Accountings; and Rule 1.15-4, Trust Account Management in Multiple-Lawyer Firm. The subparts set forth the requirements for preserving client property, including the requirements for preserving client property in a lawyer's trust account. The comment for all four subparts as well as the annotations appear after the text for Rule 1.15-4.

RULE 1.16

DECLINING OR TERMINATING REPRESENTATION

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-116-declining-or-terminating-representation/>

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of law or the Rules of Professional Conduct;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) withdrawal can be accomplished without material adverse effect on the interests of the client; or
 - (2) the client knowingly and freely assents to the termination of the representation; or
 - (3) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or
 - (4) the client insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or with which the lawyer has a fundamental disagreement; or
 - (5) the client has used the lawyer's services to perpetrate a crime or fraud; or
 - (6) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; or
 - (7) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (8) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or
 - (9) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

- (d) Upon termination of 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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

RULE 1.17

SALE OF A LAW PRACTICE

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-117-sale-of-a-law-practice/>

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

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice, except the seller may continue to practice law with the purchaser and may provide legal representation at no charge to indigent persons or to members of the seller's family;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) Written notice is sent to each of the seller's clients regarding:
 - (1) the proposed sale, including the identity of the purchaser;
 - (2) the client's right to retain other counsel and to take possession of the client's files prior to the sale or at any time thereafter; and
 - (3) the fact that the client's consent to the transfer of the client's files and legal representation to the purchaser will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice.
- (d) If the seller or the purchaser identifies a conflict of interest that prohibits the purchaser from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel.
- (e) 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. In the event the court fails to grant a substitution of counsel in a matter, that matter shall not be included in the sale and the sale otherwise shall be unaffected.
- (f) The fees charged clients shall not be increased by reason of the sale.
- (g) The seller and purchaser may agree that the purchaser does not have to pay the entire sales price for the seller's law practice in one lump sum. The seller and purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating Rules 1.5(e) and 5.4(a). The seller, however, shall have no say regarding the purchaser's conduct of the law practice.

RULE 5.6

RESTRICTIONS ON RIGHT TO PRACTICE

<https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-56-restrictions-on-right-to-practice/>

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

RULE 7.5

FIRM NAMES AND LETTERHEADS (RESERVED)

In April 2021, the North Carolina State Bar approved amendments to the Advertising Rules in the Rules of Professional Conduct, Rule 7.1 - 7.5.

FILES OF A DECEASED LAWYER

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-16/>

Adopted: October 24, 1986

Opinion rules that a lawyer appointed conservator of a deceased lawyer's files should comply with the instructions of the court and seek to preserve valuable documents and confidential information.

Inquiry:

Attorney A represents Client W, the widow of Attorney Y. Attorney Y practiced law in the area for approximately twenty-five years, during which time he accumulated numerous files. Attorney A has been appointed conservator of Attorney Y's files by the senior resident Superior Court Judge. As conservator, and counsel for Client W, Attorney A contacted each of Attorney Y's clients who had active files in his office at the time of Attorney Y's death. Most of those clients have picked up their files.

Attorney Y was associated with one other lawyer at the time of his death. Shortly after Y's death, that other lawyer opened up his own practice in a separate building.

Client W is planning to sell the office building where Y's practice was located and needs to do something with the numerous files that were accumulated over the years. Specifically, is the estate authorized to file these files in another attorney's office or in the Clerk's Office if such accommodations can be arranged? If those accommodations cannot be arranged, must the estate store these files indefinitely? Can the estate attempt to notify the clients involved by legal advertisement in the paper and then physically destroy all files not picked up in a reasonable period of time? Attorney A is concerned about problems of client confidentiality if files are turned over to another law firm. Attorney A is also concerned about the loss of valuable documents if files are shredded and destroyed.

What may Attorney A ethically do to handle the problem of Y's files?

Opinion:

The Bar cannot speak as to what the estate may or may not do as the estate is not an attorney bound by the Rules of Professional Conduct. Nor is Attorney Y's widow subject to the Rules. Nor can the Bar speak to any legal questions of the client's rights to their files.

Attorney A, as counsel for W and as conservator of Y's files, should seek to advise W reasonably according to any potential obligations she may have and should seek direction and approval from the court which appointed him conservator. There appear to be few ethics opinions dealing with ultimate disposition of the files of a deceased lawyer, particularly inactive files. On the other hand, many jurisdictions have dealt with the question of what an attorney or firm may do with their own files which become inactive and have recognized that even an

attorney in active practice is not required to retain entire files indefinitely. Generally, opinions have suggested that an attorney concerned with his own files may notify clients that inactive files may be destroyed within a reasonable period of time if the client does not pick up the file or direct that it be transferred to another attorney. In destroying files, opinions have generally suggested that attorneys should not destroy items which actually belong to the client, information useful in the assertion or defense of a client's position in a matter for which the statute of limitations has not expired, or information which the client may need, does not already have, and which is not readily available otherwise. Generally, attorneys should also retain accounts or records of their receipts or disbursements and an index or identification of destroyed files. In determining what should be destroyed, the files should be screened and determinations made according to the nature and contents of those files. See ABA Informal Opinion 1384 (March 14, 1977); Kentucky Bar Association Opinion E-300 (January 11, 1985); New York City Bar Association Opinion 82-15 (February 6, 1985); Maryland Opinion 85-77, 801 ABA/BNA Lawyer's Manual on Professional Conduct at 4359.

As an attorney, Attorney A is not in the same position as he would be with regard to the disposition of his own files, but should have due regard to the considerations involved in disposition of files of an attorney. Thus, Attorney A should take note of confidential information as governed by Rule 4 of the Rules of Professional Conduct and should avoid simply transferring a case to another attorney, without the client's instruction or consent, for handling by that other attorney. Storage in a reasonable location, whether in another attorney's office or elsewhere, would certainly be appropriate. Otherwise, Attorney A should comply with the direction of the court which appointed him conservator and follow his personal conscience and sense of professional responsibility in making every effort to see that files are dealt with appropriately.

FEES FOR THE COLLECTION OF “MED-PAY”

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-174/>

Adopted: April 15, 1994

Opinion rules that a legal fee for the collection of “med-pay” which is based upon the amount collected is unreasonable.

Inquiry:

Lawyer B charges \$150.00 to collect up to \$2000.00 due to a client under the medical payments provisions (or “med-pay” provisions) of the client’s liability insurance policy. He charges \$250.00 to collect a client’s med-pay if the med-pay is \$2000.00 or more. Is it ethical for Lawyer B to charge a sliding fee for the collection of med-pay?

Opinion:

No. RPC 35 ruled that a lawyer may not charge a contingent fee to collect med-pay because with most med-pay claims there is no risk that the insurance company will refuse payment and there is no dispute as to the amount due to the claimant. Therefore, such contingent fees are unreasonable, in violation of Rule 2.6(a), because “[t]he element of risk which is necessary to justify the typically elevated contingent fee is not present.” Unless there exists a significant risk that a med-pay claim will not be paid, it is unreasonable for a lawyer to charge a fee for collecting med-pay which is not related to the cost to the lawyer of providing the service. A sliding fee for collecting med-pay claims is based upon the amount of the claim and not upon the cost to Lawyer B to provide the service. Such a fee structure is unreasonable in violation of Rule 2.6(a).

DISPOSING OF CLOSED CLIENT FILES

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-209/>

Adopted: January 12, 1996

Opinion provides guidelines for the disposal of closed client files.

Editor's Note: This opinion was originally published as RPC 209 (Revised).

Inquiry #1:

Attorney A has been in practice for 20 years. Whenever he completes a matter for a client, he closes the client's file and retains it in his office. Attorney A has run out of space to store files in his office. The expense of renting storage space to store files is prohibitive. May Attorney A dispose of the closed client files?

Opinion #1:

Yes, subject to certain requirements.

The original file belongs to the client and, because of the general fiduciary duty to safeguard the property of a client, a lawyer should store a client's file in a secure location where client confidentiality can be maintained. See Rule 4 and Rule 10.1 of the Rules of Professional Conduct, and RPC 79.

With the consent of the client, a closed file may be destroyed at any time. Absent the client's consent to disposal of a file, a closed file must be retained for a minimum of six years after the conclusion of the representation. Six years is the required minimum period for retaining a closed client file because this retention period is consistent with retention period for records of client property set forth in Rule 10.2(b). Of course, the statute of limitations may require the retention of a closed file for more than six years.

If six years have not passed since a client's file became inactive, the file may only be destroyed with the consent of the client or, after notice to the client, the client fails to retrieve the file. The client should be contacted and advised that the lawyer intends to destroy the file unless the client retrieves the file or, within a reasonable period of time, directs that the file be transferred to another lawyer. See RPC 16. If the client indicates that he or she does not wish to retrieve the file, the lawyer may dispose of the file. On the other hand, if the client indicates that he or she would like to retrieve the file, the client must be given a reasonable opportunity to do so. If the client fails to retrieve the file within a reasonable period of time, the file may be destroyed. RPC 16. If the client fails to retrieve the file after notice, the lawyer should review the file and retain any items in the file that belong to the client or contain information useful in the assertion or defense of the client's position in a matter for which the statute of limitations has not expired. See RPC 16. These items should be retained until the client consents to their destruction or retention is no longer required by law or necessary to protect the client's rights.

After the passage of six years, the lawyer is not required to notify the client that the file will be destroyed. However, if not previously reviewed and purged of the client's possessions, the lawyer should review the file and retain any items that belong to the client. These items should be returned to the client or retained in a secure place until retrieved by the client or until the items are deemed abandoned and escheat to the state under Chap. 116B of the North Carolina General Statutes. The remaining records in the file may be destroyed.

A record should be maintained of all destroyed client files. RPC 16.

Inquiry #2:

Do closed client files have to be destroyed or disposed of in a particular manner?

Opinion #2:

No particular method of destroying files is prescribed by the Rules of Professional Conduct. However, if closed files are destroyed, the method chosen must preserve client confidentiality. See Rule 4. RPC 133 ruled that a law firm may recycle its waste paper if the responsible attorney can "ascertain that those persons or entities responsible for the disposal of waste paper employ procedures which effectively minimize the risk that confidential information might be disclosed." When client files are destroyed, similar precautions should be taken.

Inquiry #3:

Attorney A has in storage not only the files of his own clients but also the client files of lawyers who were formerly his law partners. What should Attorney A do with these client files?

Opinion #3:

Although the files belong to clients of lawyers other than Attorney A, because Attorney A has retained possession of these files, he has a fiduciary obligation to see that the files are properly handled. A former client is most likely to look for the attorney who previously handled his or her matter when trying to locate a legal file. Therefore, Attorney A may return these files to the original lawyers. Alternatively, Attorney A may dispose of the files in a manner that is consistent with the guidelines set forth in this opinion.

SALE OF A LAW FIRM TO LAWYERS EMPLOYED BY THE FIRM

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-6/>

Adopted: April 16, 1998

Opinion rules that the requirements set forth in Rule 1.17 relative to the sale of a law practice to a lawyer who is a stranger to the firm do not apply to the sale of a law practice to lawyers who are current employees of the firm.

Inquiry #1:

Founding Lawyers have practiced law together for many years. Each Founding Lawyer is a shareholder in A, B, & C Law Firm, P.A., a professional association (the “firm”). The firm employs Younger Attorneys who have expressed an interest in taking over the practice from Founding Lawyers. Younger Attorneys are not currently shareholders in the firm. Founding Lawyers anticipate retiring from the practice of law at different times over the ensuing years. They are interested in transferring the practice to Younger Attorneys and continuing to practice law as employees of the firm.

Founding Lawyers are considering two different ways of transferring the firm to Younger Attorneys. By the first method, Younger Attorneys would make sizable capital contributions to the firm in exchange for shares in the firm and the firm would, in turn, redeem the shares of Founding Lawyers. Under Rule 1.17(a) of the Revised Rules of Professional Conduct, a lawyer who sells a law practice is required to “[cease] to engage in the private practice of law in North Carolina.” If the firm is transferred to Younger Attorneys by this method, will Founding Lawyers be required to cease to engage in the private practice of law in North Carolina?

Opinion #1:

No. Rule 1.17 applies to the sale of an entire law firm to a purchasing lawyer or law firm. The rule does not apply to the transfer of shares of a professional corporation to existing employees of the firm in exchange for capital contributions to the firm. As noted in Comment [15] to Rule 1.17, “[a]dmission to, or retirement from, a law partnership or professional association, retirement plans and similar arrangements...do not constitute a sale or purchase governed by the rule.” The rule is intended to protect clients from breaches of confidentiality, conflicts of interests, and other abuses that may occur when a lawyer who is not a current member of a law firm purchases the good will of the law firm. Therefore, the sale of all of the shares of a professional association of lawyers to a lawyer who is not a member of the firm or a law firm that includes principals who are not members of the firm is subject to the requirements of the rule.

Inquiry #2:

In the second method of transferring the firm to Younger Attorneys under consideration, the Younger Attorneys will form a new professional association and own 100% of the stock of the new professional association. The

new professional association will purchase substantially all of the assets of A,B &C Law Firm including the good will and the right to use the name of the firm. If the firm is transferred to Younger Attorneys by this method, will Founding Lawyers be required to cease to engage in the private practice of law in North Carolina?

Opinion #2:

No, see opinion #1 above. Although structured like a purchase of assets by a third party, the second method of transfer is essentially a retirement plan or "similar arrangement." As noted above, these are not governed by Rule 1.17. When the assets of a firm are purchased by a professional association of lawyers who are all current employees of the firm, there is no potential for harm to the interests of the clients of the firm due to conflicts of interests, breaches of confidentiality, or abuse of fee agreements.

Inquiry #3:

Is there any prohibition against the continued use of the firm's present name, regardless of the method of transfer used, as long as Founding Lawyers continue as employees of the professional association or, when they leave the firm, they retire from the practice of law in North Carolina?

Opinion #3:

Regardless of the method of transfer employed, there is no prohibition on the continued use of the firm's present name because "...there [is] a continuing succession in the firm's identity...." Rule 7.5, Comment [1]. See also "Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law," 7 NCAC 1E, Section .0100, Rule .0102(a)("The name of every professional corporation shall contain the surname of one or more of its shareholders or of one or more persons who were associated with its immediate corporate, individual, partnership, or professional limited liability company predecessor in the practice of law....") As noted in RPC 13, "[a] law firm may continue to include in the firm name that [sic] of a retired attorney who practiced with the firm up to the time of his retirement." However, the name of a retired principal in a firm "may be used in the name of a law firm only if the [principal] has ceased the practice of law."

Inquiry #4:

Founding Lawyers may finance the purchase of the firm by Younger Attorneys. Regardless of how the purchase is financed, after their retirement, Founding Lawyers want to provide advice and input to Younger Attorneys as to the conduct of the law practice. Will Founding Lawyers assistance to Younger Attorneys violate Rule 1.17(g)'s provision that "[t]he seller...shall have no say regarding the purchaser's conduct of the law practice"?

Opinion #4:

No. As noted in opinion #1 above, Rule 1.17 does not apply to the purchase of a law firm by lawyers who are currently members of the firm. Therefore, the prohibition in paragraph (g) of Rule 1.17 is also inapplicable.

GUIDELINES FOR FEES PAID IN ADVANCE

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-10/>

Adopted: October 24, 2008

Opinion surveys prior ethics opinions on legal fees, sets forth the ethical requirements for the different types of fees paid in advance, authorizes minimum fees earned upon payment, and provides model fee provisions.

Background:

Although there are several ethics opinions on the ethical requirements relative to the different types of legal fees that are charged and collected at the beginning of the representation of a client, the information in these opinions is not gathered in one place and the opinions appear to provide contradictory or inconsistent advice. In addition, the confusion among lawyers as to the ethical requirements for legal fees paid prior to representation has led to poorly crafted fee agreements. In response to these concerns, this opinion sets forth the key ethical obligations when charging and collecting legal fees, surveys the opinions on legal fees, reconciles the holdings in the opinions, and provides model provisions for fee agreements that satisfy the requirements of the Rules of Professional Conduct and the ethics opinions.

Key Ethical Obligations

Regardless of the type of fee, all legal fees must meet the following standard set forth in Rule 1.5(a) of the Rules of Professional Conduct:

A lawyer may not make an agreement for, charge, or collect an illegal or clearly excessive fee....The factors to be considered in determining whether a fee is clearly excessive include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

It may be difficult to determine whether a legal fee is clearly excessive until the representation is concluded and all of the relevant factors are taken into consideration. At that point, a lawyer may be required to disgorge some portion of a fee that he or she has already collected to insure that the total fee is not clearly excessive. 2000 FEO 5. If the client's funds were deposited in the lawyer's trust account, the money is available to return to the client. If, because of the nature of the fee (see discussion below) the client funds were paid to the lawyer, the lawyer may be required to make a refund to the client using his or her own funds.

In addition to avoiding clearly excessive fees, a lawyer must deposit any funds that belong to a client in the lawyer's trust account. Rule 1.15-2(a). This means that any payment that remains the property of the client until earned, usually by the performance of legal services, must be deposited into the lawyer's trust account and may not be withdrawn without the client's consent until earned. When the lawyer is discharged, any money that remains on deposit in the trust account must be paid back to the client.

Finally, a lawyer must deal honestly and fairly with his or her clients and should give a client sufficient information to make reasonable decisions about the representation including decisions about the fee arrangement. See Rule 1.4 and Rule 8.4(c).

Survey of the Opinions

RPC 50 holds that a lawyer may charge and collect a general retainer as consideration for the exclusive use of the lawyer's services in a particular matter. Such retainers are sometimes referred to as "true retainers" because the money is paid for nothing more than the reservation of the lawyer's time; the legal services provided by the lawyer are separately compensated. The opinion distinguishes the general retainer from an advance payment as follows:

In its truest sense, a retainer is money to which an attorney is immediately entitled and should not be placed in the attorney's trust account. A "retainer" which is actually a deposit by the client of an advance payment of a fee to be billed on an hourly basis is not a payment to which the attorney is immediately entitled. It is really a security deposit and should be placed in the trust account. As the attorney earns the fee, the funds should be withdrawn from the account.

RPC 158 holds that an advance payment to a lawyer for services to be rendered in the future, in the absence of an agreement with the client that the payment is earned immediately, is a deposit securing the payment of a fee which is yet to be earned. As such, it remains the property of the client and must be deposited in the lawyer's trust account. See also 2005 FEO 13 (minimum fee that is collected at the beginning of a representation and will be billed against at a lawyer's regular hourly rate is neither a general retainer nor a flat fee; therefore, minimum fee remains the client's money until earned by the provision of legal services and must remain on deposit in the trust account until earned).

RPC 158 also holds that a lawyer may charge and collect [flat fee] for representation on a specific, discrete legal task such as resolution of a traffic infraction. If the client agrees that the money represents a flat fee to which the lawyer is immediately entitled, the lawyer may pay the money to himself or herself or deposit the money in the firm's general operating account rather than the firm trust account. The agreement of the client that the flat fee is earned upon payment is critical. The opinion warns, however,

[w]hether the fee portion is deposited in the trust account or paid over to the operating account, any portion of the fee which is clearly excessive may be refundable to the client either at the conclusion of the representation or earlier if [the lawyer's] services are terminated before the end of the engagement.

97 FEO 4 amplifies the definitions for the general retainer and the flat fee. Both types of fees may be charged and collected at the beginning of a representation and are considered "presently owed" to the lawyer. The general retainer is "a payment 'for the reservation of the exclusive services of the lawyer which is not used to pay for the legal services provided by the lawyer.'" [Citing and quoting Rule 1.15-1, cmt.[4].] "The true general retainer finds general application in those instances where corporate clients, merchants or businessmen have a specific need to consult the lawyer on a regular or recurring basis." The opinion admonishes that a general retainer, like all other fees, must not be clearly excessive and "[w]hat is customarily charged in similar situations may determine whether a specific true general retainer is clearly excessive."

A flat fee may be earned at the beginning of the representation and is payment "for specified legal services to be completed within a reasonable period of time." "[T]his type of fee provides economic value to the client and the lawyer alike because it enables the client to know, in advance, the expense of the representation and it rewards the lawyer for efficiently handling the matter." A flat fee arrangement is "customarily identified with isolated transactions such as representations on traffic citations, domestic actions, criminal charges, and commercial transactions." The flat fee is collected at the beginning of the representation, treated as money to which the lawyer is immediately entitled, and paid to the lawyer or deposited in the lawyer's general operating account.

The opinion recognizes that a lawyer may charge a client hybrid fees. Such hybrid fees include a payment that is part general retainer or flat fee and part advance to secure the payment of fees yet to be earned. With hybrid fees, one portion of the fee is earned immediately and the other portion remains the client's property and must be deposited in the trust account to be withdrawn as earned. "There should be a clear agreement between the lawyer and the client as to which portion of the payment is a true general retainer, or a flat fee, and which portion of the payment is an advance. Absent such an agreement, the entire payment must be deposited into the trust account and will be considered client funds until earned."

With regard to an advance payment, the opinion reiterates that

[t]he funds advanced by the client and deposited in the trust account may be withdrawn by the lawyer when earned by the performance of legal services on behalf of the client pursuant to the representation agreement with the client. Revised Rule 1.15-1(d). Should the client terminate the relationship, that portion of the advance fee deposited in the lawyer's trust account which is unearned must be refunded to the client.

2000 FEO 5 prohibits the use of the term "nonrefundable fee" in fee agreements while further elucidating the differences between fees earned at the beginning of a representation and payments that are security for a fee which is yet to be earned. The opinion emphasizes that a lawyer may treat an advance payment as an earned fee (and deposit the money in the firm's operating account) "only if the client agrees that [the] payment may be treated as earned by the lawyer when it is paid." The opinion's most important paragraphs emphasize that there is a duty to refund "any portion of a fee that is clearly excessive regardless of the type of fee that was paid" and, therefore, no fee is truly nonrefundable. "To call such a payment a 'nonrefundable fee' is false and misleading

in violation of Rule 7.1.” However, a lawyer may agree with a client that “some or all of a fee may be forfeited under certain conditions but only if the amount so forfeited is not clearly excessive in light of the circumstances and all such conditions are reasonable and fair to the client.”

Rather than calling a flat fee “nonrefundable,” the opinion instructs a lawyer to refer to such a fee as a “prepaid flat fee.”

The Types of Fees and Their Characteristics

Based upon the survey of the ethics opinions, these are the types of fees that are paid in advance and their characteristics:

Advance Payment: a deposit by the client of money that will be billed against, usually on an hourly basis, as legal services are provided; not earned until legal services are rendered; deposited in the trust account; unearned portion refunded upon the termination of the client-lawyer relationship.

General Retainer: consideration paid at the beginning of a representation to reserve the exclusive services of a lawyer but not used to pay for actual representation; generally used when corporate or business clients have a specific need to consult a lawyer on a regular basis; earned upon payment; paid to lawyer or deposited in firm operating account; some or all of the retainer is subject to refund if clearly excessive under the circumstances as determined upon the termination of the client-lawyer relationship.

Flat Fee or Prepaid Flat Fee: fee paid at the beginning of a representation for specified legal services on a discrete legal task or isolated transaction to be completed within a reasonable amount of time; fee pays for all legal services regardless of the amount of time the lawyer expends on the matter; if client consents, treated as earned immediately and paid to the lawyer or deposited in the firm operating account; some or all of the flat fee is subject to refund if clearly excessive under the circumstances as determined upon the termination of the client-lawyer relationship.

Hybrid Fee: fee paid at the beginning of a representation that is in part a general retainer or a flat fee and in part an advance payment to secure the payment of fees yet to be earned; one portion of the fee is earned immediately and the other remains the client’s property on deposit in the trust account; client must consent and agree to the portion that is a flat fee or a general retainer and earned immediately; unearned portion of the advance payment refunded upon termination of the client-lawyer relationship; flat fee/general retainer portion subject to refund if clearly excessive under the circumstances as determined upon the termination of the client-lawyer relationship.

Reconciling the Opinions

If there is a seeming inconsistency in the ethics opinions it arises from the strict formulation of the general retainer. A lawyer is allowed to charge a general retainer as consideration for the reservation of the lawyer’s services and to treat the money as earned immediately. But the client is not given a credit for future legal services up to the value of the retainer. This strikes many lawyers as detrimental to the client’s interests and it

has lead to the creation of hybrid fees. The strict formulation of the general retainer has been maintained by the Ethics Committee for three important reasons. It avoids the client confusion that is engendered if a client is told that a payment both reserves the lawyer's services and pays for future representation. In addition, requiring general retainers to be separate and distinct from advance fees means that, if an advance fee is charged for future legal services, there is no penalty to the client for deciding to change legal counsel before the advance fee is exhausted and, if a refund is owed to the client because expected services have not been performed, the money is readily available in the trust account.

Upon further reflection, the Ethics Committee has, nevertheless, determined that it is in the client's interest to receive legal services up to the value of a general retainer provided the client fully understands and agrees that the payment the client makes at the beginning of the representation is earned by the lawyer when paid, will not be deposited in a trust account, and is only subject to refund if the charge for reserving the lawyer's services (as opposed to the charge for the legal services performed) is clearly excessive under the circumstances. This newly acknowledged form of fee payment made by a client at the beginning of a representation will be referred to as a minimum fee and have the following characteristics:

Minimum Fee: consideration paid at the beginning of a representation to reserve the exclusive services of a lawyer; lawyer provides legal services up to the value of the minimum fee; earned upon payment; paid to lawyer or deposited in firm operating account; some or all of the minimum fee is subject to refund if clearly excessive under the circumstances as determined upon the termination of the client-lawyer relationship.

To the extent any previous ethics opinion is inconsistent with this opinion, it is overruled.

Model Fee Provisions: Introduction

The Rules of Professional Conduct do not require fee agreements to be in writing unless the fee is contingent on the outcome of the matter. Rule 1.5(c). The fees discussed in this opinion are not contingent and technically a lawyer is not required to put a client's agreement to pay such fees in writing. Nevertheless, given the propensity of clients to misunderstand the purpose of a payment made prior to the commencement of a representation (and whether such a payment will be refunded), a lawyer would be prudent to put in writing any fee agreement that requires a client to make a payment in advance.

In addition to explaining and obtaining the client's consent to charge the specified payments prior to representation, a lawyer's written fee agreement with a client should also contain provisions that fully and clearly explain how fees and expenses are charged including, but not limited to, the following: how billable hours are calculated and the rates charged per hour for the services of the lawyers or staff members who will work on the client's matter; if some other method of billing is used, such as value billing, how the fee will be determined; and the expenses for which the client will be liable and how the cost of those expenses will be determined.

Note that the following paragraphs contain suggested or recommended language. Lawyers are not required to use these model fee provisions.

Model Fee Provisions

Advance Payment

As a condition of the employment of Lawyer, Client agrees to deposit \$_____ in the client trust account maintained by Lawyer's firm. This money is a deposit securing payment for the legal work for Client that will be performed by Lawyer and his/her staff. Legal work will be billed on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement. Client specifically authorizes Lawyer to withdraw funds from Client's deposit in the trust account when payment is earned by the performance of legal services for Client. When the deposit is exhausted, Lawyer reserves the right to require further reasonable deposits to secure payment. Lawyer will provide Client with a [monthly, quarterly, etc.] accounting [upon request] for legal services showing the legal fees earned and payment of the fees by withdrawal against Client's deposit in the trust account. Client should notify Lawyer immediately if Client retracts his/her consent to the withdrawal of money from Client's deposit in the trust account to pay for legal services. When Lawyer's representation ends, Lawyer will provide Client with a written accounting of the fees earned and costs incurred, and a refund of any unearned portion of the deposit that remains in the trust account [less expenses associated with the representation].

General Retainer

As a condition of the employment of Lawyer, Client agrees to pay \$_____ to Lawyer. This money is a general retainer paid by Client to ensure that Lawyer is available to Client in the event that legal services are needed now or in the future and to insure that Lawyer will not represent anyone else relative to Client's legal matter without Client's consent.

Client understands and specifically agrees that:

- the general retainer is not payment for the legal work to be performed by Lawyer;
- Client will be billed separately for the legal work performed by Lawyer and his/her staff. Legal work will be billed on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement;
- the general retainer will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account rather than a client trust account; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the general retainer unless it can be demonstrated that the general retainer is clearly excessive under the circumstances.

Flat Fee (or Prepaid Flat Fee)

As a condition of the employment of Lawyer, Client agrees to pay \$_____ to Lawyer as a flat fee for the following specified legal work to be performed by Lawyer for Client: [description of legal work]

Client understands and specifically agrees that:

- the flat fee is the entire payment for the specified legal work to be performed by Lawyer regardless of the amount of time that it takes Lawyer to perform the legal work;
- the flat fee will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account rather than a client trust account; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the flat fee unless (1) the legal work is not completed, in which event a proportionate refund may be owed, or (2) it can be demonstrated that the flat fee is clearly excessive under the circumstances.

Minimum Fee

As a condition of the employment of Lawyer, Client agrees to pay \$_____ to Lawyer. This money is a minimum fee for the reservation of Lawyer's services; to insure that Lawyer will not represent anyone else relative to Client's legal matter without Client's consent; and for legal work to be performed for Client.

Client understands and specifically agrees that:

- the minimum fee will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account rather than a client trust account;
- Lawyer will provide legal services to Client on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement until the value of those services is equivalent to the minimum fee; thereafter, Client will be billed for the legal work performed by Lawyer and his/her staff on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the minimum fee, even if the representation ends before Lawyer has provided legal services equivalent in value to the minimum fee, unless it can be demonstrated that the minimum fee is clearly excessive fee under the circumstances.

DUTY TO SAFEKEEP CLIENT FILES UPON SUSPENSION, DISBARMENT, DISAPPEARANCE, OR DEATH OF FIRM LAWYER

<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2012-formal-ethics-opinion-13/>

Adopted: July 19, 2013

Opinion rules that the partners and managerial lawyers remaining in a firm are responsible for the safekeeping and proper disposition of both the active and closed files of a suspended, disbarred, missing, or deceased member of the firm.

Inquiry #1:

The law firm A & B, PA, was formed as a professional corporation in 1992. Lawyer A and Lawyer B were the initial shareholders in the firm. In 1993, Lawyer C joined the firm and became a shareholder. The professional corporation's articles of incorporation were amended to change the professional corporation's name to A, B & C, PA.

In 1998 Lawyer C closed a real estate transaction for a client of the firm. The file was placed among the firm's inventory of client files.

In 2008 Lawyer A and Lawyer B learned that Lawyer C had committed numerous embezzlements from the firm's trust account in a cumulative amount exceeding \$1,000,000. Lawyer C (hereinafter, "C") was ousted from the firm and was subsequently disbarred. The firm's articles of incorporation were amended to change the professional corporation's name back to A & B, PA. When C was ousted from the firm, Lawyer A and Lawyer B reviewed the files for the clients of the firm whose legal services had been provided by C. When their review was completed, Lawyer A and Lawyer B instructed or allowed C to take possession of those client files. Since 2008, paper client files have been in a storage facility to which C's lawyer has the key, and electronic client files, to the extent that there were any, have been stored in a password-protected manner by C's lawyer.

The client whose transaction was closed by C in 1998 is now seeking her file, which is believed to be in the storage facility. C is in prison. C's lawyer cannot access the storage facility due to physical infirmity. However, C's lawyer is willing to give Lawyer A and Lawyer B the key to the storage facility, and to authorize them to access and retrieve the client files. Lawyer A and Lawyer B assert that they are not obligated to help the client obtain her file.

When a lawyer leaves a firm and is subsequently disbarred, what is the professional responsibility of the lawyers remaining with the firm relative to the safekeeping and proper disposition of the files of the clients of the disbarred lawyer?

Opinion #1:

The remaining lawyers in the firm are responsible for the safekeeping and proper disposition of both the active and closed files of the disbarred lawyer in their custody. As used in this opinion, “files” applies to both electronic and paper files unless otherwise indicated. Because of the risk of loss, closed files may not be relinquished to a disbarred lawyer who is no longer subject to the regulation of the North Carolina State Bar and no longer required to comply with the Rules of Professional Conduct.

Rule 1.15 requires a lawyer to preserve client property, including information in a client’s file such as client documents and lawyer work product, from risk of loss due to destruction, degradation, or disappearance. See also RPC 209 (noting the “general fiduciary duty to safeguard the property of a client”); RPC 234 (requiring the storage of a client’s original documents with legal significance in a safe place or their return to the client); 98 FEO 15 (requiring exercise of lawyer’s “due care” when selecting depository bank for trust account); and 2011 FEO 6 (allowing law firm to use “cloud computing” if reasonable care is taken to protect the security of electronic client files).

If a lawyer practices in a law firm with other lawyers, the responsibility to preserve a client’s property, including the client’s file, is not solely the responsibility of the lawyer providing the legal services to the client. Rule 5.1(a) of the Rules of Professional Conduct requires the partners in a law firm and all lawyers with comparable managerial authority to make “reasonable efforts to ensure that the firm...has in effect measures giving reasonable assurance that all lawyers in the firm...conform to the Rules of Professional Conduct.”

The professional responsibilities of the partners and the lawyers with managerial authority relative to the files of the firm are the same, regardless of whether the lawyer has departed the firm because of suspension, disbarment, disappearance, or death.¹ The lawyers are responsible for (1) ensuring that any open client matter is promptly and properly transitioned to the lawyer of the client’s choice, and (2) retaining possession of and safekeeping closed client files of the departed lawyer until the requirements for disposition of closed files set forth in RPC 209 can be fulfilled. See, e.g., RPC 48 (explaining duties upon firm dissolution including continuity of service to clients and right of clients to counsel of their choice).

All firms should recognize the possibility of suspension, disbarment, disappearance, or death of a firm lawyer. Law firms should plan for and include in their operating procedures a means or method to access and secure all client files for which the firm would be responsible if such an event were to occur.

Inquiry #2:

Do Lawyer A and Lawyer B have a duty to help a former client of the firm obtain the file relating to the legal services provided to her by C when C was a member of the firm?

Opinion #2:

Yes, when the location of a file is known, the lawyers have a duty to take reasonable measures to assist a client to obtain the file. See Opinion #1 and RPC 209.

Endnote

1. This opinion does not address the professional responsibilities of the firm lawyers when a lawyer leaves the firm to practice elsewhere.

NORTH CAROLINA
BAR ASSOCIATION
seeking liberty + justice



NORTH CAROLINA
BAR FOUNDATION

Produced by the North Carolina Bar Association
Professional Vitality Committee with a grant from
the North Carolina Bar Foundation