Succession Planning Handbook for Iowa Lawyers

Office of Professional Regulation

Protecting the Interests of Your Clients in the Event of Your Disability or Death

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Office of Professional Regulation

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Why Succession Planning is Important

The Office of Professional Regulation ("OPR") frequently receives inquiries regarding the proper procedure for closing the practice of a deceased sole practitioner. Often the decedent planned to avoid formal probate of his or her estate, but did not specifically plan for transition or disposition of the law practice after death. The lawyer engaged by a surviving family member then contacts OPR to ascertain who has or can acquire authority to transfer active case files, close out the decedent's trust account, dispose of old case files, and perhaps sell the practice.

A similar scenario can arise when a sole practitioner becomes disabled and no longer able to practice. The disabled practitioner often has not made arrangements for administration of his or her practice in the event of disability. Eventually other lawyers and judicial officers in the practice area become aware of the disability, and contact the district chief judge or the OPR office to ascertain what should be done to protect the interests of the lawyer's clients and maintain the practice pending resolution of the disability.

The demographics of Iowa's private practitioner community suggest that the death or disability of sole practitioners will be common in coming years:

Today there are over 4,300 lawyers in full-time practice in Iowa.[1]

Over twenty percent of our members in firms of five or fewer lawyers have been in practice 31 or more years.[2]

The median age of our private practitioners in firms of five or fewer lawyers was 51 to 55 in 2006, up from 49 in 2000, and 44 in 1995.

Twenty-six percent of our 4,300 private practitioners appear to be engaged as sole practitioners.[3]

[1] Client Security Commission statistics as of May 9, 2011.
[2] Iowa State Bar Association, The Economics of Law Practice in Iowa: Breakdown of firms 5 or less for 2006 Solo and Small Firm Conference
[3] Iowa State Bar Association, The Economics of Law Practice in Iowa - 2006

The purpose of this handbook is to assist Iowa's sole practitioner community in preparing their practices for maintenance, closure, or sale incident to their death or disability.

Applicable Iowa Rules

Until 2005, no Iowa rule specifically required that practicing lawyers prepare their practices for maintenance, closure, or sale incident to their disability or death. The Iowa Rules of Professional Conduct, adopted in 2005, now address the requirement:

> To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *See* Iowa Ct. Rs. 35.16(6), 35.17 (where reasonable necessity exists, the local chief judge shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

Iowa R. of Prof'l Conduct 32:1.3, cmt. 5.

Several of our other rules suggest obligations to clients upon disability or death.

Iowa Rule of Professional Conduct 32:1.9(c)(2) (Confidentiality of Information). A lawyer may not reveal information relating to representation of a former client except as the ethics rules otherwise permit or require with respect to a client. Arguably the requirement to formulate a backup plan falls within the exception for disclosures permitted or required by the ethics rules, so that your clients' written, informed consent to your assisting lawyer accessing their confidential information is not required. Nonetheless, disclosure of the existence of the backup agreement to clients in your standard fee agreements or engagement letters may be prudent.

Iowa Rule of Professional Conduct 32:1.5(e) (Fees). A lawyer should not divide a fee for legal services with another lawyer who is not in the same firm, absent disclosure to the client of the arrangement, and consent by the client confirmed in writing. Depending on the terms of your backup agreement regarding the scope of duties and compensation of the assisting attorney, the

disclosure and consent contemplated by rule 32:1.5(e) may be required at some point during your assisting lawyer's administration of your practice.

Iowa Rule of Professional Conduct 32:1.16 (Declining or Terminating Representation). A lawyer must withdraw from representation of clients when his or her mental or physical condition materially impairs his or her ability to represent the client. The withdrawal may require permission from the tribunal where any action on behalf of the clients may be pending. The withdrawal also triggers obligations to reasonably notify the client, return papers and property to them, and refund any unearned advance fees.

Iowa Rule of Professional Conduct 32:1.17 (Sale of Law Practice). This rule prescribes the manner in which a law practice may be sold by one lawyer to another, and includes good will as a saleable component of a law practice. Comment 13 to the rule contemplates sale of a practice by a non-lawyer representative, such as the estate of a deceased lawyer, and implies that the purchasing lawyer is obligated to ensure that the rule is observed even though the seller is not a lawyer.

Opinion 78-30, Iowa Board of Professional Ethics and Conduct, Disposition of Files of Deceased Lawyer (1978). Opinion 79-72, Iowa Board of Professional Ethics and Conduct, Deceased Partner's Files – Disposition or Retention (1979). Both opinions place responsibility for proper disposition of client files on the executor of the deceased lawyer's estate. The opinions appear to contemplate notice to the clients and an opportunity for a client to retrieve the client's file before the file may be destroyed. If no address is available for a particular client, the opinions specify retention of that client's file for a period of five years after notice, before the file may be destroyed.

Opinion 08-02, Iowa State Bar Association Committee on Ethics and Practice Guidelines (2008). This opinion recommends creation of a written file destruction policy, disclosure of the file destruction policy in engagement letters and closing letters, and a final notice before destruction of a client file. The opinion suggests sample disclosure or notice language.

As noted in comment 5 to rule 32:1.3, our rules also provide a framework for judicial supervision of a practice when a lawyer has not planned for disability or death.

Iowa Court Rule 35.16. (Disability Suspension). Iowa Court Rule 35.16 provides for suspension of a lawyer's license to practice upon disability, and for appointment of a trustee to protect the interests of clients and other affected persons. The principal duty of the trustee is to protect the interests of the disabled lawyer's clients. The trustee has little if any duty to protect the interests of the disabled lawyer, and the trustee's actions generally will not preserve the disabled lawyer's practice during the suspension period.

Iowa Court Rule 35.17. (Death or Suspension of Practicing Attorney). Iowa Court Rule 35.17 provides for appointment of a trustee to protect the interests of clients and other affected persons upon the death or suspension of a lawyer, provided reasonable necessity exists. Here also, the principal duty of the trustee is to protect the interests of the dead or suspended lawyer's clients. The trustee's actions generally will not protect the interests of the deceased or suspended lawyer or the deceased lawyer's estate or preserve the value of the practice for the estate or for sale.

What Happens at Death if No Succession Plan Exists

Three courses of action are commonly used for disposition of the practice of a deceased sole practitioner if no succession planning has occurred.

Iowa Probate Code. The first course of action is to proceed under the Iowa probate code. The personal representative of the decedent appears to have authority to administer the practice as part of the general administration of the decedent's estate. Iowa Code § 633.350 (2009); *see* Ethics Op. 79-72. The personal representative would be entitled to assistance from the attorney designated to assist in administration of the estate. Iowa Code § 633.82 (2009). A special appointment of another lawyer to assist with administration of the practice would be possible under Iowa Code section 633.84 (delegation of authority to outside specialists with court approval).

Iowa Court Rule 35.17. A second course of action is to petition for appointment of a lawyer (or lawyers) as trustee or trustees to administer the practice under Iowa Court Rule 35.17.

An application for the trustee appointment under rule 35.17 may be made on behalf of the Attorney Disciplinary Board or the county bar association. The application must show that the lawyer involved has died, and that reasonable necessity exists for appointment of a trustee.

Authority for the appointment is placed with the chief judge in the district where the deceased lawyer practiced. The appointment by the chief judge is subject to confirmation by the Supreme Court. Thereafter, the trusteeship is supervised by the chief judge through final report and closure. Closure of the trust is appropriate when all pending representation of clients has been completed, or the purposes of the trust otherwise have been accomplished. The trust is terminated by order of the appointing chief judge.

Informal Administration. If knowledgeable law firm staff members are available to assist and the decedent lawyer's family is supportive, it sometimes is possible to close a law practice without court supervision. This approach

appears to be most suitable when a non-lawyer family member, such as a spouse, has been a long-term, integral part of the law firm staff. Another lawyer known to the family often assists with informal administration. Even under this approach it still may be necessary to seek a trustee appointment under rule 35.17 for the limited purpose of administering and closing the decedent lawyer's trust account, as the decedent may have been the only account signatory, or the depository bank may not recognize the authority of any signatory who survives the decedent.

Comparing the Courses of Action. The courses of action offer different advantages and features, and are not mutually exclusive. In recent years, one or more of the courses of action have been employed in particular situations. The considerations in selecting the proper course or courses of action include the following:

> The trustee's duty to protect the interests of the clients is narrower than the duties of a fiduciary for a deceased lawyer's estate. For this reason, trustees sometimes are able to move more quickly to advise active clients of their need to engage new counsel, distribute trust account balances to those persons entitled to them, and distribute files to clients.
>
> Trustees do not attempt to preserve the practice for sale, collect receivables, or address dissolution of the business aspects of the practice. Absent use of a parallel course of action by the decedent's survivors, a trusteeship generally dismembers the client base of the practice and may reduce the value of the practice remaining for the decedent's estate.
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> The allowable fees and expenses of a trustee are to be paid first from the decedent's estate. It appears the trustee's fees and expenses are entitled to administrative priority. *See* Iowa Code § 633.425(2) (2009) (other costs of administration). If the trustee cannot be paid from the estate, the Client Security Commission has authority and discretion to pay those fees and expenses. If there is any concern regarding the solvency of the estate, a trustee appointment under rule 35.17 therefore offers a second avenue for compensation of the trustee even if formal probate is undertaken also.
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> Administration of the law practice through formal probate, with the appointment of professional assistance if required, offers more encompassing authority than a trustee appointment. In addition to the tasks normally undertaken by a trustee to protect the interests of clients, representatives of the estate can attempt to sell the physical assets and good will of the practice, collect earned but unpaid fees including the value of work performed but unbilled at the time of the

decedent's death, and dissolve the business aspects of the practice. If one professional handles these tasks in addition to those normally undertaken by a trustee, the overall cost to the estate may be reduced. Use of the probate process may be especially attractive if a likely purchaser of the practice is readily available.

Informal administration of a law practice generally is dependent on knowledgeable, experienced staff members or family members available to assist. As the nature of law practice becomes less reliant on staff support and more reliant on lawyer technology skills, it seems less likely that informal administration will be a viable alternative. Informal administration is dependent on the willingness of third parties to recognize authority of the staff or family members to do so. In those instances where informal authority is insufficient, resort to a trusteeship or formal probate proceeding may be required.

What Happens Upon Disability if No Succession Plan Exists

Three courses of action also are available for administration of the practice of a disabled practitioner if no succession planning has occurred. The considerations in selecting these courses of action are similar to the considerations applicable to administration of the practice of a deceased practitioner.

Iowa Court Rule 35.16. The course of action commonly used to administer the practice of a disabled sole practitioner, if no succession planning has occurred, is appointment of an Iowa lawyer (or lawyers) as trustee or co-trustees under the provisions of Iowa Court Rule 35.16. Rule 35.16 provides a two-step process, the first of which is the disability suspension of the practitioner, which then prompts the appointment of a trustee.

An application to the Supreme Court for the disability suspension of an Iowa lawyer may be made on behalf of the Attorney Disciplinary Board or the county bar association. The application must show that the lawyer involved is not discharging professional responsibilities, due to disability, incapacity, disappearance, or abandonment of the practice. The Supreme Court also may enter a suspension order based on the certification by any clerk of court in Iowa that an attorney has been adjudicated mentally incapacitated, an alcoholic, a drug addict, or has been committed to a hospital or institution for treatment.

Upon notification that a disability suspension has been ordered by the Supreme Court, an appointment of trustee *shall* be made by the chief judge in the district where the disabled lawyer practiced. The appointment by the chief judge is subject to confirmation by the Supreme Court. Thereafter, the

trusteeship is supervised by the chief judge through final report and closure. Closure of the trust is appropriate once the disabled attorney has been reinstated to practice, or all pending representation of clients has been completed, or the purposes of the trust otherwise have been accomplished. The trust may be terminated by order of the appointing chief judge.

Conservatorship Under Probate Code. Another course of action is appointment of a conservator under the provisions of Iowa Code section 633.566. An application for appointment of a conservator must show that the proposed ward's decision-making capacity is so impaired that he or she is unable to make, communicate, or carry out important decisions concerning the person's financial affairs. Iowa Code § 633.556(2)(a) (2009). As is the case in a formal probate proceeding, the conservator would be entitled to assistance from the attorney designated to assist in administration of the conservatorship. Iowa Code §§ 633.82, 633.649 (2009). Similarly, a special appointment of another lawyer to assist with administration of the practice would be possible under Iowa Code section 633.84 (delegation of authority to outside specialists with court approval).

Informal Administration. If knowledgeable law firm staff members are available to assist and the disabled lawyer's family is supportive, it sometimes is possible to administer a disabled lawyer's law practice without court supervision. This approach appears to be most suitable when a non-lawyer family member, such as a spouse, has been a long-term, integral part of the law firm staff. Another lawyer known to the family often assists with informal administration. Even under this approach it still may be necessary to seek a disability determination and trustee appointment under rule 35.16 for the limited purpose of administering and closing out the decedent lawyer's trust account, as the disabled lawyer may have been the only account signatory. A disability determination and trustee appointment also may be necessary if the disabled lawyer refuses to cooperate with, or resists, informal administration.

Duties of the Trustee Appointed under Iowa Court Rules 35.16 or 35.17

Under both Iowa Court Rule 35.16 and Iowa Court Rule 35.17, the overarching purpose of the trust is to protect the interests of clients and other affected persons. Both rules describe the trustee's tasks as inventorying files, sequestering client funds, and taking other action appropriate to the purpose of the trust.

The practice among trustees appointed under Iowa Court Rules 35.16 and 35.17 has been to file an initial report shortly after appointment to advise the chief judge of the initial findings and actions taken by the trustee. The initial reports typically are followed by periodic interim reports as needed, and a final report once the trust is ready for closure.

The trustee is entitled by the rule to seek reasonable fees and expenses from the suspended or disabled lawyer, or the deceased attorney's estate, and otherwise by application to the Client Security Commission. Although the rule does not specify, trustees generally have first submitted their claim for fees and expenses to the appointing chief judge for approval before attempting collection from the suspended or disabled lawyer, or from the decedent's estate, or from the Client Security Commission. Approval of a claim for fees nonetheless is discretionary with the Client Security Commission. In practice, the Commission generally approves fees for expenses plus all reasonable time expended in trust administration, at the prevailing hourly rate in the area where the trustee practices.

Iowa Court Rules 35.16 and 35.17 address potential conflicts of interest on the part of the trustee. First, the rules make clear that while serving as trustee, the lawyer so appointed may not also serve as attorney for any client of the disabled or decedent lawyer or for any other affected person. Second, the trustee is forbidden from examining papers or otherwise acquiring information regarding real or potential conflicts of interest with the trustee's own clients. If the trustee inadvertently acquires such information, he or she is required to promptly recuse himself or herself from, or refuse employment in, the matter presenting the conflict of interest.

Trustees appointed under these rules have found it necessary to accomplish some or all of the following tasks:

> Secure the office, files and other property including trust and business accounts. If the disabled, suspended, or deceased lawyer maintained client files or trust account records electronically, it may be necessary also to secure the computers, along with the user names and passwords for access.
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> Protect the confidences of clients just as the disabled or decedent lawyer would have protected them.
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> Provide notice of the death, suspension, or disability to clients, opposing counsel, and the court in all pending matters, and notify clients of their right (and need) to pick up their file and engage other counsel. *See* Iowa R. Prof'l Conduct 32:1.16(d)(duties to clients upon termination of representation). Clerks of court or court administrators for those counties where the disabled, suspended, or decedent lawyer practiced can provide lists of open cases in which the disabled or decedent lawyer has appeared.
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> Be alert for conflicts of interest with the trustee's own practice and address them as contemplated in rules 35.16 and 35.17.

Identify imminent deadlines if possible, and provide specific notice to clients regarding these deadlines.

Locate all trust account monies and records, coordinate with the depository institutions to execute new signature cards to prevent dissipation by former signatories on the accounts, reconcile the account statements and client ledger cards, and then make arrangements to return all monies to the rightful owners. *See* Iowa R. Prof'l Conduct 32:1.15(d), Iowa Court Rule 45.2(2) (prompt accounting and return of funds or property clients or third persons are entitled to receive). Accounting assistance from the Client Security Commission should be requested if the condition or complexity of the accounting records exceeds the capabilities of the trustee, especially if there may be shortages in the account. Trustees should be careful about returning trust account monies to clients before the account is completely reconciled or without approval by the district judge. If the trust account balance will not be sufficient to reimburse all parties for whom trust account balances should exist, the only solution may be to formulate a plan of distribution and present it to the district chief judge for approval.

Refer clients with potential claims to the Client Security Commission for claims process, when appropriate. Claim forms are available at the Client Security Commission web page:

http://www.iowacourts.gov/Professional_Regulation/Attorney_RegulationCommissions/Client_Security/

Inventory and return files to clients to the extent possible; provide proper notice before destruction of any files; make recommendations to the chief judge regarding destruction arrangements for files eligible for immediate destruction, long-term storage of files not eligible for immediate destruction, and the retention period and ultimate destruction authority for retained files. *See* Iowa R. Prof'l Conduct 32:1.16(d).

Maintain a record of all actions taken, and file interim reports and a final report with the appointing chief judge regarding the actions taken.

Submit a detailed statement of time and expenses devoted to service as trustee to the appointing chief judge, and request approval thereof. The order approving the fees and expenses then is submitted to the suspended or disabled attorney or deceased attorney's estate for payment. If payment is not reasonably forthcoming from those

sources, the order and detailed statement should be submitted to the Client Security Commission for approval and reimbursement.

The principal duty of the trustee is to protect the interests of the disabled, suspended, or deceased lawyer's clients. The trustee has little if any duty to protect the interests of the disabled, suspended, or deceased lawyer, or the deceased lawyer's estate, and should not attempt to keep the lawyer's business viable during the suspension period or preserve the value of the practice for the estate or for sale. If a legal representative of the deceased, suspended, or disabled lawyer appears and seeks to preserve the value of the practice for sale, the trustee should cooperate to the extent possible. A sale of the practice could produce sufficient return to help pay the fees and costs of the trusteeship.

Why Planning for Death or Disability Makes Sense

Planning for the effect of your death or disability on your practice is appropriate and necessary for ethical, personal, and professional reasons.

Once representation of a client has been undertaken, a lawyer has an ethical duty of diligence. The duty includes planning to safeguard the client's interests in the event the lawyer no longer is able to practice due to death or disability. *See* Iowa R. Prof'l Conduct 32:1.3, cmt. 5.

A lawyer has a specific obligation to take appropriate action to safeguard the confidences of clients upon the lawyer's death or disability. Iowa R. Prof'l Conduct 32:1.6, cmt. 18; Iowa R. Prof'l Conduct 32:1.9.

Contingency plans for your extended absence may be a condition precedent to issuance of coverage by your professional liability insurance carrier, or at least a consideration in the insurer's issuance of coverage.

If a lawyer is temporarily disabled, preserving the viability of the practice pending resolution of the disability may be in the lawyer's economic interest. If the lawyer is permanently disabled or deceased, planning will assist in transfer of the practice to another lawyer. *See* Iowa R. Prof'l Conduct 32:1.17 (sale of practice may include good will).

In both situations, prior planning is likely to ease the burden of winding up or selling the practice on surviving family members.

Law practices not prepared for the practitioner's disability or death have been a common source of claims against the Client Security Trust Fund, generally based on retainers inadequately accounted for. In addition, trustee claims for compensation and expenses often are ultimately submitted to the

Client Security Commission for payment. Orderly practice transition can reduce both kinds of claims.

Finally, effecting a smooth transition for clients following death or disability is a suitable demonstration of professionalism and competence as a practitioner.

Succession Planning If You are a Member of a Firm

The focus of this handbook is on planning for death or disability on the part of sole practitioners. Trustee appointments appear to occur less frequently with respect to lawyers who practice as part of a firm. However, a firm also can plan to ease transition of the practice when a lawyer member of the firm becomes disabled or dies. The law firm organizational document is an appropriate place to include provisions relating to the death or disability of lawyer members of the firm.

One possible topic for the firm organizational document is a list of duties of all lawyer members of the firm during routine practice, with the goal of maintaining a well-organized practice that is amenable to transition. The list of duties might include many of the topics addressed in this handbook under the heading "Preparing Your Practice for Death or Disability."

Other possible topics for the firm organizational document are law firm authority and duties after the death or disability of a lawyer member of the firm. The list of topics under the heading "Possible Provisions of Your Backup Agreement and Power of Attorney" suggests some possible inclusions within these topic areas.

The firm also may want to consider formalizing assisting attorney or practice group arrangements, wherein lawyers working in similar areas will maintain some level of familiarity with the matters assigned to another attorney or attorneys in the group.

Disability Planning for the Sole Practitioner

An initial task is selection of another attorney to serve as your assisting attorney. This could be a mutual arrangement. This selection should be made with care, as your assisting attorney will be responsible for the transition of your clients and your office, and probably also for proper disbursement of client funds in your trust account.

A written agreement between you and your assisting attorney regarding the scope of the duties to be performed and your consent to their performance

is highly recommended. The agreement should include language sufficient to make the assisting attorney's powers durable in the event of your disability. *See* Iowa Code § 633B.1 (2009) ("this power of attorney shall become effective upon the disability of the principal" or similar words). Other possible provisions of the agreement are discussed in the paragraph below entitled "Possible Provisions of Your Backup Agreement and Power of Attorney."

Your assisting attorney should be familiar with your office procedures and system. Consider providing your assisting attorney a tour of your office, with introductions to your staff, explanations to staff on the role your assisting attorney likely will play in the event of your death or disability, and familiarization with where to locate and how to use the key practice organizational tools of your office.

You should provide your clients full disclosure of the existence and purpose of the backup agreement. An appropriate vehicle for this advisory may be your standard engagement letter or retainer agreement.

You also should consider advising your family regarding the existence and purpose of the backup agreement.

Possible Provisions of Your Backup Agreement and Power of Attorney

Your agreement should describe each of the events that will trigger the authority created in the agreement, and who the decision-maker will be on the occurrence of each such event.

You will want to specify in the agreement whether your assisting attorney will act as your agent or as your lawyer. A brief discussion of the considerations involved in this designation is included elsewhere in this handbook.

Durability language as described in Iowa Code section 633B.1 is a crucial inclusion in your backup agreement. The agreement should make clear that it is intended to serve both as the recordation of your agreement regarding the duties and responsibilities of your assisting attorney, and as a durable power of attorney vesting your assisting attorney with full authority to execute the duties and responsibilities provided in it, despite your disability.

Other issues you will want to consider addressing in your backup agreement include the following:

Authority to enter the office, take charge of equipment, supplies, files.
Authority to receive and process mail.
Authority to contact current clients regarding their files.

Authority to obtain continuances or extensions as necessary.
Authority to collect fees.
Payment of firm expenses and client costs.
Authority to prepare final accountings and statements for clients.
Authority to make trust account disbursements and deposits.
Authority to arrange "tail" professional liability coverage.
Provisions for compensation of the assisting attorney.
Provisions for compensation of staff.
Authority to properly dispose of inactive files.
Authority to arrange for storage of files and trust account records as required.
Authority to terminate leases.
Authority to liquidate or sell practice.

Capacity of Your Assisting Attorney as Counsel or Agent

A key issue for discussion with your assisting attorney is whether he or she will function as your lawyer, or simply as your agent. It is recommended that his or her status as lawyer or agent be explicitly designated in your backup agreement. At least some of the considerations in this decision are as follows:

If your assisting attorney is acting as your lawyer, then his or her primary duty is to you. He or she would not be able to inform your clients of any errors discovered in the work you had performed, unless you expressly consent to and direct such disclosures. The assisting attorney would be reliant on his or her own professional liability coverage for errors made during performance of duties under the backup agreement. The assisting attorney's duties as your counsel could increase the probability that conflicts of interest would prevent the assisting attorney from assuming duties as successor counsel for your clients.

If your assisting attorney is acting solely as your agent, he or she could provide your clients notice of errors, just as you would have done had you been able. However, the assisting attorney's professional liability coverage may not provide coverage for services as an agent, and some arrangement for indemnity of the assisting attorney might be necessary. Acting solely as your agent, the potential for conflicts likely would be diminished, such that the assisting attorney could more easily assume duties as successor counsel for your clients.

Death Planning for the Sole Practitioner

The authority of your assisting attorney under the backup agreement and durable power of attorney will terminate at your death. At that time, your personal representative (if any) will possess general authority to administer the practice incident to administration of your estate. Your personal representative may be assisted by the lawyer designated for the estate, or another lawyer specially appointed to administer the practice.

Accordingly, you will want to maintain a current will, designating your personal representative and alternates, so that probate of your estate can be opened and a personal representative can be appointed quickly upon your death.

Consider including language in your will empowering your personal representative with broad authority, along with such professionals as the personal representative may engage, to administer your practice in an effort to preserve its value pending disposition and assist with orderly transition of client matters.

Consider instructing your personal representative to engage your assisting attorney for that purpose, with the appointment order or engagement incorporating provisions of the backup agreement.

You will want to consider the likely cash flow situation of your practice upon your disability or death. If the remainder of your property (other than your practice) is likely to pass by operation of law to your spouse or other family members, your practice might be placed in a cash-poor situation, especially if your accounts receivable are not amenable to rapid billing. Cash flow needs of your practice for routine expenses and compensation of staff likely will continue for some period after your departure. You may want to consider practice interruption insurance, disability insurance, and insurance on your life as the sources for interim capital to operate the practice in the event of your disability or death.

Preparing Your Practice for Death or Disability

Much of the confusion and expense involved in transition of your practice after your death or disability can be minimized by some prior planning and disciplined conduct of your practice prior to your departure. Some recommended tasks in preparation of your practice are as follows:

Consult with your bank to ensure that the provisions of your backup agreement pertaining to authority over bank accounts will be honored. You may find it necessary to prepare a separate, specific durable power of attorney to satisfy your bank's preferences.

Ensure your staff or software can produce an accurate list of current clients, addresses and telephone numbers.

Ensure your staff or software can produce an accurate list of deadlines in pending matters.

Keep your billing and trust account records up to date.

Avoid keeping original client documents (e.g., wills, abstracts) in client files; consolidate and index your holdings of these documents or return them to clients.

Periodically purge old files after proper notice to the clients and passage of the minimum retention period suggested in the following section of the handbook.

Include provisions in your engagement letters and fee contracts regarding disposition of client files once a matter is concluded, and notice regarding the existence of your backup plan and its purpose.

Handling Old Client Files

One of the most troublesome issues confronted incident to death or permanent disability of a practicing lawyer is the disposition of client files that never had been reviewed for client property or periodically purged by the lawyer. Proper handling of these files generally is a matter of considerable time and expense for the fiduciary or trustee, and likely will consume substantial time on the part of your assisting attorney as well.

The Iowa Supreme Court has adopted the "entire file" approach to the question of who owns the contents of a client's file. *Iowa Supreme Court Attorney Disciplinary Bd. v. Gottschalk*, 729 N.W.2d 812 (Iowa 2007); Restatement (Third) of the Law Governing Lawyers §46(2) (2000). Subject to narrow exceptions, the client owns the entire file, including attorney work product. *Gottschalk*, 729 N.W.2d at 819-820.

Unless you have addressed disposition of client files in your engagement letters, fee contracts, or termination letters, it will not be permissible for your fiduciary, trustee, or assisting attorney to summarily destroy client files. Before any file is destroyed, it should be checked for original documents (wills, abstracts, conveyance instruments) and any other specific client property that must be removed from file and returned to the rightful owners. The custodian then should attempt to contact the clients and return all files to the clients involved. If a client refuses to take custody of the file or otherwise fails to

respond after being contacted and advised of the impending destruction of the file, the custodian would be authorized to destroy the remaining contents of the file if the normal file retention period has passed.

With respect to those files for which a client address cannot be found, the normal procedure ordered in the trustee cases has been to publish notice regarding the files, and then retain those files that are unclaimed for a period of five years during which these clients may come forward and claim their file.

Lawyers can minimize the burden of file disposition upon termination of their practice by adopting some procedures in their daily practice:

> Consider including an agreement and consent regarding file destruction in your initial engagement letter or fee agreement with each client, or in the arrangements made upon termination of each representation.
>
> Periodically examine all files for which the last action was completed more than six years ago (or more than whatever minimum retention period is prescribed by your professional liability carrier); remove documents or other client property for transfer to the client; and consider destruction of the file provided client consent exists.
>
> Use a secure method to destroy client files, such as shredding, and document for future reference when and how each file was destroyed.

As a general rule, the best practice is to retain a client's file for a minimum period of six years after the last action taken on the file, as prescribed for trust account records and supporting documents under Iowa Court Rule 45.2(2). Your professional liability carrier may recommend a substantially longer minimum retention period. Your professional liability carrier may recommend a shorter retention period if claims against your estate are resolved through probate.

Terminology and Forms

The term *Assisting Attorney* as used throughout this handbook refers to the lawyer you have made arrangements with to close your practice. The term *Successor Signatory* refers to the person you have authorized as a signer on your lawyer trust account. The term *Planning Attorney* refers to you, your estate, or your personal representative.

The sample *Agreement – Full Form,* provided in Appendix C, authorizes the Assisting Attorney to transfer client files, sign checks on your general

account, and close your practice. This form also provides for payment to the Assisting Attorney for services rendered, designates the procedure for termination of the Assisting Attorney's services, and provides the Assisting Attorney with the option to purchase the law practice. In addition, the form provides for the appointment of an Successor Signatory on your lawyer trust account. The *Agreement – Full Form* is a sample only. You may modify it as needed.

The sample *Agreement – Short Form,* also provided in Appendix C, includes authorization to sign on your general account and consent to close your office. It also provides for the appointment of an Successor Signatory on your lawyer trust account. It does not include many of the terms found in the sample *Agreement – Full Form* version, but it does include the authorizations most critical to protecting your clients' interests.

Implementing the Planning Process

The first step in the planning process is for you to find someone – preferably an attorney – to close your practice in the event of your death, disability, impairment, or incapacity.

The arrangements you make for closure of your office should include a signed consent form authorizing the Assisting Attorney to contact your clients for instructions on transferring their files, authorization to obtain extensions of time in litigation matters when needed, and authorization to provide all relevant people with notice of closure of your law practice. (See sample *Agreement – Full Form* and sample *Agreement – Short Form* provided in Appendix C of this handbook.)

The agreement could also include provisions that give the Assisting Attorney authority to wind down your financial affairs, provide your clients with a final accounting and statement, collect fees on your behalf, and liquidate or sell your practice. Arrangements for payment by you or your estate to the Assisting Attorney for services rendered can also be included in the agreement. (See sample *Agreement – Full Form* provided in Appendix C of this handbook.)

At the beginning of your relationship, it is crucial for you and the Assisting Attorney to establish the scope of the Assisting Attorney's duty to you and your clients. If the Assisting Attorney represents you as *your* attorney, he or she may be prohibited from representing your clients on some, or possibly *all*, matters. Under this arrangement, the Assisting Attorney would owe his or her fiduciary obligations to you. For example, the Assisting Attorney could inform your clients of your legal malpractice or ethical violations only if you consented. However, if the Assisting Attorney is not *your* attorney, he or she may have an ethical obligation to inform your clients of your errors. (See *What*

If? Answers to Frequently Asked Questions, Appendix A of this handbook.)

Whether or not the Assisting Attorney is representing you, that person must be aware of conflict-of-interest issues and must check for conflicts if he or she (1) is providing legal services to your clients or (2) must review confidential file information to assist with transferring clients' files.

In addition to arranging for an Assisting Attorney, you may also want to arrange for a Successor Signatory on your trust account. It is best to choose someone other than your Assisting Attorney to act as the Successor Signatory on your trust account. This provides for checks and balances, since two people will have access to your records and information. It also avoids the potential for any conflicting fiduciary duties that may arise if the trust account does not balance.

Planning ahead to protect your clients' interests in the event of your disability or death involves some difficult decisions, including the type of access your Assisting Attorney and/or Successor Signatory will have, the conditions under which they will have access, and who will determine when those conditions are met. These decisions are the hardest part of planning ahead.

If you are incapacitated, for example, you may not be able to give consent to someone to assist you. Under what circumstances do you want someone to step in? How will it be determined that you are incapacitated, and who do you want to make this decision?

One approach is to give the Assisting Attorney and/or Successor Signatory access only during a specific time period or after a specific event and to allow the Assisting Attorney and/or Successor Signatory to determine whether the contingency has occurred. Another approach is to have someone else (such as a spouse, trusted friend, or family member) keep the applicable documents (such as a limited power of attorney for the Assisting Attorney and/or the Successor Signatory) until he or she determines that the specific event has occurred. A third approach is to provide the Assisting Attorney and/or Successor Signatory with access to records and accounts at all times.

If you want the Assisting Attorney and/or Successor Signatory to have access to your accounts contingent on a specific event or during a particular time period, you have to decide how you are going to document the agreement. Depending on where you live and the bank you use, some approaches may work better than others. Some banks require only a letter signed by both parties granting authorization to sign on the account. The sample agreements provided in Appendix C of this handbook should be legally sufficient to grant authority to sign on your account. However, you and the Assisting Attorney and/or the Successor Signatory may also want to sign a limited power of

attorney. (See *Power of Attorney – Limited* provided in Appendix C of this handbook.) Most banks prefer a power of attorney. Signing a separate limited power of attorney increases the likelihood that the bank will honor the agreement. It also provides you and the Assisting Attorney and/or the Successor Signatory with a document limited to bank business that can be given to the bank. (The bank does not need to know all the terms and conditions of the agreement between you and the Assisting Attorney and/or the Successor Signatory.) If you choose this approach, consult the manager of your bank. When you do, be aware that power of attorney forms *provided by the bank* are generally unconditional authorizations to sign on your account and may include an agreement to indemnify the bank. Get written confirmation that the bank will honor *your* limited power of attorney or other written agreement. Otherwise, you may think you have taken all necessary steps to allow access to your accounts, yet when the time comes the bank may not allow the access you intended.

If the access is going to be contingent, you may want to have someone (such as your spouse, family member, personal representative, or trusted friend) hold the power of attorney until the contingency occurs. This can be documented in a letter of understanding, signed by you and the trusted friend or family member. (See *Letter of Understanding* provided in Appendix C of this handbook.) When the event occurs, the trusted friend or family member provides the Assisting Attorney and/or the Successor Signatory with the power of attorney.

If the authorization will be contingent on an event or for a limited duration, the terms must be specific and the agreement should state how to determine whether the event has taken place. For example, is the Assisting Attorney and/or the Successor Signatory authorized to sign on your accounts only after obtaining a letter from a physician that you are disabled or incapacitated? Is it when the Assisting Attorney and/or the Successor Signatory, based on reasonable belief, says so? Is it for a specific period of time, for example, a period during which you are on vacation? You and the Assisting Attorney and/or Successor Signatory must review the specific terms and be comfortable with them. These same issues apply if you choose to have a family member or friend hold a general power of attorney until the event or contingency occurs. All parties need to know what to do and when to do it. Likewise, to avoid problems with the bank, the terms should be specific, and it must be easy for the bank to determine whether the terms are met.

Another approach is to allow the Assisting Attorney and/or Successor Signatory access at all times. With respect to your bank accounts, this approach requires going to the bank and having the Assisting Attorney and/or Successor Signatory sign the appropriate cards and paperwork. When the Assisting Attorney and/or Successor Signatory is authorized to sign on your account, he or she has complete access to the account. This is an easy

approach that allows the Assisting Attorney and/or Successor Signatory to carry out office business even if you are just unexpectedly delayed returning from vacation. Adding someone as a signer on your accounts allows him or her to write checks, withdraw money, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. Under this arrangement, you cannot control the signer's access. These risks make it an extremely important decision. If you choose to give another person full access to your accounts, your choice of signer is crucial to the protection of your clients' interests, as well as your own.

Access to the Trust Account

When arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until the court appoints a trustee to administer your practice and your accounts, pursuant to Iowa Court Rules 35.16(6) or 35.17. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, claims against the Client Security Trust Fund, professional liability claims, or other civil suits.

On the other hand, as emphasized above, allowing access to your trust account is a serious matter. You must give careful consideration to whom you give access and under what circumstances. If someone has access to your trust account and that person misappropriates money, your clients will suffer damages. In addition, you may be held responsible.

There are no easy solutions to this problem, and there is no way to know absolutely whether you are making the right choice. Each person must look at the options available to him or her, weigh the relative risks, and make the best choices he or she can.

Adding an Assisting Attorney or Successor Signatory to your general or lawyer trust account is possible regardless of the form of entity you use for practicing law.

Client Notification

Once you have made arrangements with an Assisting Attorney and/or Successor Signatory, the next step is to provide your clients with information about your plan. The easiest way to do this is to include the information in

your retainer agreements and engagement letters. This provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement provides written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary. (See the sample language for inclusion in fee agreements and engagement letters provided in Appendix C of this handbook.)

Death of a Sole Practitioner: Special Considerations

If you authorize another lawyer to administer your practice in the event of death, disability, impairment, or incapacity, that authority terminates when you die. See Iowa Code § 633B.1 (2009). The personal representative of your estate has the legal authority to administer your practice. He or she must be told about your arrangement with the Assisting Attorney and/or Successor Signatory and about your desire to have the Assisting Attorney and/or Successor Signatory carry out the duties of your agreement. The personal representative can then authorize the Assisting Attorney and/or Successor Signatory to proceed.

It is imperative that you have an up-to-date will nominating a personal representative (and alternates if the first nominee cannot or will not serve) so that probate proceedings can begin promptly and the personal representative can be appointed without delay. If you have no will, there may be a dispute among family members and others as to who should be appointed as personal representative. A will can provide that the personal representative shall serve without bond. Absent such a provision, a relatively expensive fiduciary bond will have to be obtained before the personal representative is authorized to act. Note, however, that any Iowa lawyer court-appointed as fiduciary will be required to post a fiduciary bond unless one of the exceptions of Iowa Court Rule 39.13 applies.

For many sole practitioners, the law practice will be the only asset subject to probate. Other property will likely pass outside probate to a surviving joint tenant, usually the spouse. This means that unless you keep enough cash in your law practice bank account, there may not be adequate funds to retain the Assisting Attorney and/or Successor Signatory or to continue to pay your clerical staff, rent, and other expenses during the transition period. It will take some time to generate statements for your legal services and to collect the accounts receivable. Your accounts receivable may not be an adequate source of cash during the time it takes to close your practice. Your Assisting Attorney and/or Successor Signatory may be unable to advance expenses or may be unwilling to serve without pay. One solution to this problem is to maintain a small insurance policy, with your estate as the beneficiary. Alternately, your surviving spouse or other family members can be named as beneficiary, with instructions to lend the funds to the estate, if needed.

Iowa law gives broad powers to a personal representative to sell or wind down a business, and to hire professionals to help administer the estate. Iowa Code §§ 633.84, 633.350 (2009). However, for the personal representative's protection, you may want to include language in your will that expressly authorizes that person to arrange for closure of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time. (See the *Will Provisions* provided in Appendix C of this handbook.)

It is important to allocate sufficient funds to pay an Assisting Attorney and/or Successor Signatory and necessary secretarial staff in the event of disability, incapacity, or impairment. To provide funds for these services, consider maintaining a disability insurance policy in an amount sufficient to cover these projected office closure expenses.

Start Now

We encourage you to select an attorney to assist you; follow the procedures outlined in this handbook; and forward the name, address, and phone number of your Assisting Attorney to your professional liability insurance carrier on an annual basis. (See *Notice of Designated Assisting Attorney* provided in Appendix C of this handbook.)

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Grateful acknowledgement is made of the following other resources, from which principles, concepts, tips, and narrative have been adapted in this handbook.

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APPENDIX A

What If? Answers to Frequently Asked Questions

If you are planning to close your office or if you are considering helping a friend or colleague close his or her practice, you should think through a number of issues. How you structure your agreement will determine what the Assisting Attorney must do if the Assisting Attorney finds (1) errors in the files, such as missed time limitations, or (2) misappropriation of client funds.

Discussing these issues at the beginning of the relationship will help to avoid misunderstandings later when the Assisting Attorney interacts with the Planning Attorney's former clients. If these issues are not discussed, the Planning Attorney and the Assisting Attorney may be surprised to find that the Assisting Attorney (1) has an obligation to inform the Planning Attorney's clients about a potential malpractice claim or (2) may be required to report the Planning Attorney to the Attorney Disciplinary Board.

The best way to avoid these problems is to have a written agreement with the Planning Attorney and, when applicable, with the Planning Attorney's former clients. If there is no written agreement clarifying the obligations and relationships, an Assisting Attorney may find that the Planning Attorney believes the Assisting Attorney is representing the Planning Attorney's interests. At the same time, the former clients of the Planning Attorney may also believe that the Assisting Attorney is representing their interests. It is important to keep in mind that an attorney-client relationship can be established by the reasonable belief of a would-be client.

This section reviews some of these issues and the various arrangements that the Planning Attorney and the Assisting Attorney can make. All of these frequently asked questions, except question 8, are presented as if the Assisting Attorney is posing the questions.

1. If the Planning Attorney is unable to practice and I am assisting with the office closure, must I notify the former clients of the Planning Attorney if I discover a potential malpractice claim against the Planning Attorney?

The answer is largely determined by the agreement you have with the Planning Attorney and the Planning Attorney's former clients. If you do not have an attorney-client relationship with the Planning Attorney, and you are the new lawyer for the Planning Attorney's former clients, you must inform your client (the Planning Attorney's former client) of the error, and advise him or her to submit a claim to the Professional Liability Fund, unless the scope of your representation of the client excludes actions against the Planning

Attorney. If you want to limit the scope of your representation, do so in writing and advise your clients to get independent advice on the issues.

If you are the Planning Attorney's lawyer, and not the lawyer for his or her former clients, you should discuss the error with the Planning Attorney and inform the Planning Attorney of his or her obligation to inform the client of the error. As the attorney for the Planning Attorney, you are obligated to follow the instructions of the Planning Attorney. You must also be careful that you do not make any misrepresentations. *See* Iowa R. Prof. Conduct 32:8.4(a)(3). This situation could arise if the Planning Attorney refused to fulfill his or her obligation to inform the client – and also instructed you not to tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client.

In most cases, the Planning Attorney will want to fulfill his or her obligation to inform the client. As the Planning Attorney's lawyer, you and the Planning Attorney can include a clause in your agreement that gives you (the Assisting Attorney) permission to inform the Planning Attorney's former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Planning Attorney. Rather, it would authorize you to inform the Planning Attorney's former clients that a potential error exists and that they should seek independent counsel.

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

Again, the answer is based on your relationship with the Planning Attorney and the Planning Attorney's clients. If you are the Planning Attorney's lawyer, you would be limited to disclosing only information that the Planning Attorney wished you to disclose. You would, however, want to make clear to the Planning Attorney's clients that you do not represent them and that they should seek independent counsel. If the Planning Attorney suffered from a condition of a sensitive nature and did not want you to disclose this information to the client, you could not do so.

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

Whether you are permitted to represent the former clients of the Planning Attorney depends on (1) whether the clients want you to represent them and (2) who else you represent.

If you are representing the Planning Attorney, you cannot represent the Planning Attorney's former clients on any matter against the Planning Attorney.

This would include representing the Planning Attorney's former clients on a malpractice claim, ethics complaint, or fee claim against the Planning Attorney. If you do not represent the Planning Attorney, you are limited by conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undertaking representation or reviewing confidential information of a former client of the Planning Attorney.

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case to another lawyer. A referral is advisable if the matter is outside your area of expertise or if you do not have adequate time or staff to handle the case. In addition, if the Planning Attorney is a friend, bringing a legal malpractice claim or fee claim against him or her may make you vulnerable to the allegation that you did not zealously advocate on behalf of your new client. To avoid this potential exposure, you should provide the client with names of other attorneys or refer the client to the Iowa State Bar Association's Lawyer Referral Service.

4. What procedures should I follow for distributing the funds in the trust account?

If your review or the Successor Signatory's review of the lawyer trust account indicates that there may be conflicting claims to the funds in the trust account, you should initiate a procedure for distributing the existing funds, such as a court-directed interpleader, pursuant to Iowa Rule of Civil Procedure 1.251.

5. If there is an ethical violation, must I tell the Planning Attorney's former clients?

The answer depends on the relationships. The answer is (1) no, if you are the Planning Attorney's lawyer; (2) maybe, if you are not representing the Planning Attorney or the Planning Attorney's former clients; and (3) yes, if you are the attorney for the Planning Attorney's former clients.

If the Planning Attorney violated a disciplinary rule and you are his or her lawyer, you are not obligated to inform the Planning Attorney's former clients of any ethical violations or report any of the Planning Attorney's ethical violations to the Attorney Disciplinary Board if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. Iowa R. Prof. Conduct 32:8.3(a). Although you may have no duty to report, you may have other responsibilities. For example, if you discover that some of the client funds are not in the lawyer trust account as they should be, you, as the attorney for the Planning Attorney, should discuss this matter with the Planning Attorney and encourage the Planning Attorney to correct the shortfall. If the Planning Attorney does not correct the shortfall and you believe the Planning Attorney's conduct violates the disciplinary rules, you

should resign. If you are the attorney for the Planning Attorney and the Planning Attorney is deceased, you should contact the personal representative of the estate. If the Planning Attorney is alive but unable to function, you (or the Successor Signatory) may have to disburse the amounts that are available and inform the Planning Attorney's former clients that they have the right to seek legal advice.

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

If you are a signer on the trust account and (1) you are not the attorney for the Planning Attorney and (2) you are not representing any of the former clients of the Planning Attorney, you may still have a fiduciary obligation to notify the clients of the shortfall, and you may have an obligation to report the Planning Attorney to the Attorney Disciplinary Board.

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about the shortfall and advise the client of available remedies. These remedies may include (1) pursuing the Planning Attorney for the shortfall, (2) filing a claim with the Client Security Trust Fund, (3) filing a claim with the appropriate professional liability carrier, or (4) filing an ethics complaint with the Attorney Disciplinary Board. You also have an obligation under Iowa R. Prof. Conduct 32:3(a) to report the Planning Attorney to the Attorney Disciplinary Board. If you are a friend of the Planning Attorney, this is a particularly important issue. You should determine *ahead of time* whether you are prepared to assume (1) the obligation to inform the Planning Attorney's former clients of the Planning Attorney's ethical errors and (2) the duty to report the Planning Attorney to the Attorney Disciplinary Board if a violation occurs. If you do not want to inform your clients (the former clients of the Planning Attorney) about possible ethics violations, you must explain to your clients that you are not providing them with any advice on ethics violations of the Planning Attorney. You should advise the clients, in writing, to seek independent representation on these issues. Limiting the scope of your representation, however, does not eliminate your duty to report pursuant to Iowa R. Prof. Conduct 32:8.3(a).

6. If the Planning Attorney stole client funds, do I have exposure to an ethics complaint against me?

You do not have exposure to an ethics complaint for stealing the money, unless you in some way aided or abetted the Planning Attorney in the unethical conduct.

Whether you have an obligation to inform the Planning Attorney's former clients of the misappropriation depends on your relationship with the Planning

Attorney and the Planning Attorney's former clients. (See question 5 above.)

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

7. What are the pros and cons of allowing someone to have access to my trust account? How do I make arrangements to give my Successor Signatory access?

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, a Successor Signatory is able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. If these arrangements are not made, the clients' money must remain in the trust account until a court allows access. This court order may be through a conservatorship or an order pursuant to Iowa Court Rule 35.16(6) or 35.17. This delay may leave the clients at a disadvantage, since settlement funds, or unearned fees held in trust, are often needed to hire a new lawyer.

On the other hand, the most important "con" of authorizing trust account access is your inability to control the person who has been granted access. A Successor Signatory with unconditional access has the ability to write trust account checks, withdraw funds, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. It is very important to carefully choose the person you authorize as a signer and, when possible, to continue monitoring your accounts.

If you decide to have a Successor Signatory, decide whether you want to give (1) access only during a specific time period or when a specific event occurs or (2) access all the time.

8. The Planning Attorney wants to authorize me as a trust account signer. Am I permitted to also be the attorney for the Planning Attorney?

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As a Successor Signatory on the Planning Attorney's trust account, you would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. This duty could be in conflict with your duty to the Planning Attorney if (1) you were hired to represent him or her on issues related to the closure of his or her law practice and (2) there were misappropriations in the trust account and the Planning

Attorney did not want you to disclose them to the clients. To avoid this potential conflict of fiduciary interests, the most conservative approach is to choose one role or the other: be a Successor Signatory **OR** be an Assisting Attorney representing the Planning Attorney on issues related to the closure of his or her practice.

APPENDIX B

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

1. Use retainer agreements and engagement letters that disclose that you have arranged for an Assisting Attorney to close your practice in the event of death, disability, impairment, or incapacity. (See the sample retainer agreement and engagement letter provisions contained in Appendix C of this handbook.)

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 assigned numbers;
   g. Where the closed files are kept and how to access them;
   h. The office policy on keeping original client documents;
   i. Where original client documents are kept;
   j. Where the safe deposit box is located and how to access it;
   k. The bank name, address, account signers, and account numbers for all law office bank accounts;
   l. The location of all law office bank account records (trust and general);
   m. Where to find, or who knows about, the computer passwords;
   n. How to access your voice mail (or answering machine) and the access code numbers; and
   o. Where the post office or other mail service box is located and how to access it.

3. Make sure all your file deadlines (including follow-up deadlines) are calendared.

4. Document your files.

5. Keep your time and billing records up-to-date.

6. Avoid keeping original client documents, such as wills and other estate planning documents.

7. Have a written agreement with an attorney who will close your practice (the

"Assisting Attorney") that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict-of-interest issues. If your written agreement authorizes the Assisting Attorney to sign 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 on 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 general account.

8. If your written agreement provides for a Successor Signatory for your trust 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 on the happening of a specific event. In most instances, you and the Successor Signatory will have to sign bank forms providing for access to your trust account. Choose your Successor Signatory wisely; he or she will have access to your clients' funds.

9. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of office changes.

10. Introduce your Assisting Attorney and/or Successor Signatory to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney and/or Successor Signatory if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Assisting Attorney and/or Successor Signatory 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 and/or Successor Signatory.

12. Forward the name, address, and phone number of your Assisting Attorney to your professional liability insurance carrier each year. This will enable your carrier to locate the Assisting Attorney in the event of your death, disability, impairment, or incapacity.

13. Review your written agreement with your Assisting Attorney and/or Successor Signatory annually.

14. Review your engagement agreement form each year to make sure that the name of your Assisting Attorney is current.

15. Prepare a Law Office List of Contacts practice aid. Make sure your Assisting Attorney has a copy.

Appendix C
Planning Forms

Agreement – Full Form

(Sample – Modify As Appropriate)

The sample *Agreement – Full Form* beginning on the next page 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 business bank accounts (except your trust account) and to close your law practice. The agreement gives a Successor Signatory authority to sign on your trust accounts. (See the caveat below.) The agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

Caveat: The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is a Successor Signatory on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Successor Signatory on the trust account.

Authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's record-keeping requirements. The Planning Attorney should consult his or her banking institution to complete the paperwork required for its records.

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.

Agreement To Close Law Practice

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

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

And: _____ , hereinafter referred to as "Successor Signatory"

1. **Purpose.** The purpose of this Agreement to Close Law Practice (hereinafter "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 or the Planning Attorney's representatives, heirs, or assigns. The term *Successor Signatory* refers to the person designated to sign on Planning Attorney's trust account and to provide an accounting for the funds belonging to Planning Attorney's clients.

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 or 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 Planning Attorney's 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 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 signator, in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, except Planning Attorney's lawyer trust account(s). Planning Attorney's consent includes, but is not limited to:

- Entering Planning Attorney's office and using 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 client files and records of Planning Attorney's law practice and obtaining information about 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;
- 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 when their 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 Planning 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 find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney authorizes Successor Signatory to sign on Planning Attorney's lawyer trust account(s).

Assisting Attorney and Successor Signatory will not be responsible for processing or payment of Planning Attorney's personal expenses.

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 and Successor Signatory a reasonable sum for services rendered by Assisting Attorney and Successor Signatory while closing the law practice of Planning Attorney. Assisting Attorney and Successor Signatory agree to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney and Successor Signatory agree to provide the services specified herein as independent contractors.

6. **Preserving Attorney Client Privilege.** Assisting Attorney and Successor Signatory agree to preserve confidences and secrets of Planning Attorney's clients and their attorney client privilege. Assisting Attorney and Authorized Signor shall make only disclosures of information reasonably necessary to carry out the purpose of this Agreement.

7. Assisting Attorney Is Attorney for Planning Attorney. (Delete one of the following paragraphs as appropriate.) While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney client relationship and follow the Iowa Rules of Professional Conduct. Assisting Attorney has permission to inform the Professional Liability Fund of errors or potential errors of Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

OR:

While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the Professional Liability Fund of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of

any ethics violations committed by Planning Attorney.

8. **Successor Signatory Is Not Attorney for Planning Attorney.** While fulfilling the terms of this Agreement, Successor Signatory is not the attorney for Planning Attorney. Successor Signatory has permission to inform Planning Attorney's present and former clients of any misappropriations in Planning Attorney's trust account and instruct them to obtain independent legal advice or to contact the Client Security Trust Fund of the Bar of Iowa.

9. **Providing Legal Services.** Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's clients, provided Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's 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, refer the clients to another attorney.

10. **Informing Client Security Commission.** Assisting Attorney agrees to inform the Client Security Commission where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. **Contacting the Professional Liability Carrier.** Planning Attorney authorizes Assisting Attorney to contact the Planning Attorney's professional liability insurance carrier concerning any legal malpractice claims or potential claims. (**Note to Planning Attorney:** Assisting Attorney's role in contacting the insurance carrier will be determined by Assisting Attorney's arrangement with Planning Attorney. See Section 7 of this Agreement.)

12. **Providing Clients with Accounting.** Successor Signatory and/or Assisting Attorney agree[s] to provide Planning Attorney's clients with a final accounting and statement for legal services of Planning Attorney based on Planning Attorney's records. Successor Signatory agrees to return client funds to Planning Attorney's clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

13. Assisting Attorney's Alternate. (Delete one of the following paragraphs as appropriate.) If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints as Assisting Attorney's alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Assisting Attorney's Alternate shall comply with the terms of this Agreement. Assisting Attorney's Alternate consents to this appointment, as shown by the signature of Assisting Attorney's Alternate on this Agreement.

OR:

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Assisting Attorney may appoint an alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney shall enter into an agreement with any such Assisting Attorney's Alternate, under which Assisting Attorney's Alternate consents to the terms and provisions of this Agreement.

14. Successor Signatory's Alternate. (Delete one of the following paragraphs as appropriate.) If Successor Signatory is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____as Successor Signatory's alternate (hereinafter "Successor Signatory's Alternate"). Successor Signatory's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Successor Signatory's Alternate shall comply with the terms of this Agreement. Successor Signatory's Alternate consents to this appointment, as shown by the signature of Successor Signatory's Alternate on this Agreement.

OR:

If Successor Signatory is unable or unwilling to act on behalf of Planning Attorney, Successor Signatory may appoint an alternate (hereinafter "Successor Signatory's Alternate"). Successor Signatory shall enter into an agreement with any such Successor Signatory's Alternate, under which Successor Signatory's Alternate consents to the terms and provisions of this Agreement.

15. **Indemnification.** Planning Attorney agrees to indemnify Assisting Attorney and Successor Signatory against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Successor Signatory under this Agreement, provided the actions or omissions of Assisting Attorney and Successor Signatory 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 and Successor Signatory were assisting Planning Attorney with the closure of Planning Attorney's law practice. Assisting Attorney and Successor Signatory shall be responsible for all acts and omissions of gross negligence and willful misconduct.

This indemnification provision does not extend to any acts, errors, or omissions of Assisting Attorney as attorney for the clients of Planning Attorney.

16. **Option to Purchase Practice.** Assisting Attorney shall have the first option to purchase the law practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the Iowa Rules of Professional Conduct and other applicable law.

17. **Arranging to Sell Practice.** If Assisting Attorney opts not to purchase Planning Attorney's law practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney's law practice and will pay Planning Attorney or Planning Attorney's estate all monies received for the law practice.

18. **Fee Disputes to be Arbitrated.** Planning Attorney, Assisting Attorney, and Successor Signatory agree that all fee disputes among them will be decided by _____.

19. **Termination.** This Agreement shall terminate upon: (1) delivery of written notice of termination by Planning Attorney to Assisting Attorney and/or Successor Signatory during any time that Planning Attorney is not under disability, impairment, or incapacity, as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Planning Attorney's representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Assisting Attorney and/or Successor Signatory to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney and/or Successor Signatory pursuant to this Agreement.

If Assisting Attorney and/or Successor Signatory or their respective Alternates for any reason terminate this Agreement, or are terminated, Assisting Attorney and/or Successor Signatory or their respective Alternates shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney's behalf within 30 days of termination or resignation and (2) provide Planning Attorney with Planning Attorney's files, records, and funds.

Date: _____

_____
_____, Planning Attorney

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____ _____.

_____
_____, Notary Public

Date: _____

_____
_____, Assisting Attorney

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____ _____.

_____
_____, Notary Public

Date: _____

_____
_____, Successor Signatory

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____
_____.

_____
_____, Notary Public

Agreement – Short Form
(Sample – Modify As Appropriate)

The sample *Agreement – Short Form* beginning on the next page includes authorization for the Assisting Attorney to sign on your business bank accounts (except the lawyer trust accounts) and to close your law practice. It authorizes the Successor Signatory to sign on your trust account. It does not include a provision for payment to the Assisting Attorney, a description of termination powers, consent to represent the Planning Attorney's clients, or other provisions included in the sample *Agreement – Full Form.*

Caveat: The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent.) If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is a signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Successor Signatory on the trust account.

Authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's record-keeping requirements. A Planning Attorney should consult his or her banking institution to complete the paperwork required for its records.

Consent and Agreement to Close Office

This Consent and Agreement to Close Office (hereinafter "this Consent") is entered into between _____, hereinafter referred to as "Planning Attorney," and _____, hereinafter referred to as "Assisting Attorney," and _____, hereinafter referred to as "Successor Signatory."

I, (*insert name of Planning Attorney*), authorize (*insert name of Assisting Attorney*), Assisting Attorney, and any attorney or agent acting on my behalf, to take all actions necessary to close my law practice upon my death, disability, impairment, or incapacity. These actions include, but are not limited to:

- Entering my office and using my equipment and supplies, as needed, to close my practice;
- Opening and processing my mail;
- Taking possession and control of all property comprising my law office, including client files and records;
- Examining client files and records of my law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying my 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 my clients;
- Filing notices, motions, and pleadings on behalf of my clients when their 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 I have given this authorization;
- Winding down the business affairs of my practice, including paying business expenses and collecting fees;
- Informing the Client Security Commission where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files; and
- Contacting my professional liability insurance carrier concerning claims and potential claims.

I authorize (*insert name of Successor Signatory*), Successor Signatory, to sign

checks on my trust accounts and provide an accounting to my clients of funds in trust.

My bank or financial institution may rely on the authorizations in this Consent, unless such bank or financial institution has actual knowledge that this Consent has been terminated or is no longer in effect.

For the purpose of this Consent, my death, disability, impairment, or incapacity shall be determined by evidence the Assisting Attorney deems reasonably reliable, including, but not limited to, communications with my family members or representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Upon such evidence, the Assisting Attorney is relieved from any responsibility or liability for acting in good faith in carrying out the provisions of this Consent.

Assisting Attorney and Successor Signatory agree to preserve client confidences and secrets and the attorney client privilege of my clients and to make disclosure only to the extent reasonably necessary to carry out the purpose of this Consent. Assisting Attorney and Successor Signatory are appointed as my agents for purposes of preserving my clients' confidences and secrets, the attorney client privilege, and the work product privilege. This authorization does not waive any attorney client privilege.

(Delete one of the following paragraphs as appropriate:)

Assisting Attorney represents me and acts as my attorney in closing my law practice. Assisting Attorney has permission to inform the Professional Liability Fund of my errors or potential errors. Assisting Attorney has permission to inform my clients of any errors or potential errors and to instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

OR:

Assisting Attorney does not represent me and is not acting as my attorney in closing my law practice. While fulfilling the obligations of this Consent, Assisting Attorney has permission to inform the Professional Liability Fund of my errors or potential errors. Assisting Attorney may inform my clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

Successor Signatory is not my attorney. Successor Signatory may inform my clients of any misappropriations in my trust account and instruct them to obtain independent legal advice or contact the Client Security Trust Fund.

I, Planning Attorney, appoint Successor Signatory as signator, in substitution of my signature, on my lawyer trust account(s) upon my death, disability, impairment, or incapacity.

I understand that neither Successor Signatory nor Assisting Attorney will process, pay, or in any other way be responsible for payment of my personal bills.

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

Assisting Attorney and/or Successor Signatory may revoke this acceptance at any time, and each has the power to appoint a new assisting attorney or Successor Signatory in Assisting Attorney's and/or Successor Signatory's place. My authorization and consent to allow Assisting Attorney and Successor Signatory to perform these and other services necessary for the closure of my law office do not require Assisting Attorney and/or Successor Signatory to perform these services. If Assisting Attorney and/or Successor Signatory revokes this acceptance, Assisting Attorney and/or Successor Signatory must promptly notify me.

Date: _____

_____
_____, Planning Attorney

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____ _____.

_____
_____, Notary Public

Date: _____

_____
_____, Assisting Attorney

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____ _____.

_____
_____, Notary Public

Date: _____

_____
_____, Successor Signatory

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____ _____.

_____
_____, Notary Public

Power Of Attorney – Limited

I, _____ , do hereby appoint as my agent and attorney-in-fact for the limited purpose of conducting all transactions and taking any actions that I might do with respect to my bank account(s) and safe deposit box(es). I do further authorize my banking institutions to transact my account(s) as directed by my attorney-in-fact and to afford the attorney-in-fact all rights and privileges that I would otherwise have with respect to my account(s) and safe deposit box(es). Specifically, I am authorizing my attorney-in-fact to sign my name on checks, notes, drafts, orders, or instruments for deposit; withdraw or transfer money to or from my account(s); make electronic fund transfers; receive statements and notices on the account(s); and do anything with respect to the account(s) that I would be able to do. I am also authorizing my attorney-in-fact to enter and open my safe deposit box(es), place property in the box(es), remove property from the box(es), and otherwise do anything with the box(es) that I would be able to do, even if my attorney-in-fact has no legal interest in the property in the box.

This Power of Attorney will continue until the banking institution receives my written revocation of this Power of Attorney or written instructions from my attorney-in-fact to stop honoring the signature of my attorney-in-fact.

This Power of Attorney shall not be affected by my subsequent disability or incapacity.

Date: _____

_____
_____, Planning Attorney

State of Iowa, County of _____:

This instrument was acknowledged before me on _____ by _____
_____.

_____
_____, Notary Public

Letter of Understanding

TO: _____

I am enclosing a Power of Attorney in which I have named _____ as my attorney-in-fact. You and I have agreed that you will do the following:

1. Upon my written request, you will deliver the Power of Attorney to me or to any person that I designate.

2. You will deliver the Power of Attorney to the person named as my attorney-in-fact (if more than one person is named, you may deliver it to either of them) if you determine, using your best judgment, that I am unable to conduct my business affairs due to disability, impairment, 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 Lawyer] *[Date]*

Notice Of Designated Assisting Attorney

I, _____, have authorized the following attorneys to assist with the closure of my practice:

Name of Assisting Attorney: Address:
Phone Number:

Name of Assisting Attorney's Alternate: Address:
Phone Number:

_____ _____
[Planning Attorney] *[Date]*

Mail this form to your professional liability insurance carrier.

Notice of Designated Successor Signatory

I, _____ , have authorized the following [attorneys] to sign on my lawyer trust account(s) upon the closure of my practice:

Name of Successor Signatory for Trust Account(s): Address:
Phone Number:

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

[Planning Attorney] *[Date]*

[NOTE: This form may be used in lieu of, or in addition to, the Notice of Designated Assisting Attorney. If you have selected an Assisting Attorney to help in the closure of your practice and added someone as an Successor Signatory on your lawyer trust account, you should communicate your choices to your family, the Assisting Attorney, the Successor Signatory, and any designated alternates to avoid confusion.]

Will Provisions
(Sample – 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 _____, [and/or with Successor Signatory on _____]; if that [these] Agreement[s] are not in effect, my personal representative is authorized to enter into [a] similar agreement[s] with other attorneys that 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.

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, selling of the practice, collecting accounts receivable, paying expenses relating to the practice, providing trust accounting and issuing unused trust balances owing to my clients, employing an attorney or attorneys to review my files, completing unfinished work, notifying my clients of my death and assisting them in finding other attorneys, and providing long-term storage of and access to my closed files.

Paragraph for Inclusion in Retainer Agreement
(Sample – Modify As Appropriate)

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

Paragraph for Inclusion in Engagement Letter
(Sample – Modify As Appropriate)

I also want 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. In such event, my office staff or the assisting attorney will contact you and provide you with information about how to proceed.

Letter Advising That Lawyer Is Unable to Continue In Practice
(Sample – Modify as appropriate)

Re: [*Name of Case*]

Dear [*Name*]:

Due to ill health, [*Planning Attorney*] is no longer able to continue practice. You will need to retain the services of another attorney to represent you in your legal matters. I will be assisting [*Planning Attorney*] in closing [*his/her*] practice. We recommend that you retain the services of another attorney immediately so that all 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 pick-up*] 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 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 [*Planning Attorney*] for your closed files at the following address and phone number:

[Name] [Address] [Phone]

You will receive a final accounting from [*Planning Attorney*] in a few weeks. This will include any outstanding balances that you owe to [*Planning Attorney*] and an accounting of any funds in your client trust account.

On behalf of [*Planning 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.

Sincerely,

[Assisting Attorney] [Firm]

Enclosure

Letter Advising that Lawyer is Closing His/Her Office
(*Sample – Modify As Appropriate*)

Re: [*Name of Case*]

Dear [*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. In addition, the Iowa State Bar Association provides a Find-A-Lawyer service that can be searched at http://www.iowabar.org/AttorneyOnLine.nsf/srch.

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

It is imperative that you obtain a new attorney immediately. [*Insert appropriate language regarding time limitations or other critical time lines that client should be aware of.*] Please let me know the name of your new attorney or pick up a copy of your file by [*date*].

I [*or insert name of the attorney who will store files*] will continue to store my copy of your closed file for 10 years. After that time, I [*or insert name of other attorney, if relevant*] will 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 (insert name of attorney who will be storing 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 [*fill in number*] weeks, I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

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 to have provided you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[Attorney] [Firm]

Letter From Firm Offering To Continue Representation
(Sample – Modify As Appropriate)

Re: [*Name of Case*]

Dear [*Name*]:

Due to ill health, [*Planning Attorney*] is no longer able to continue representing you on your case(s). A member of this firm, [*Name*], is available to continue handling your case if you wish [*him/her*] to do so. 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 this office. If you wish to retain another attorney, please give us written authority to release your file directly to your new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to your new attorney yourself. We have enclosed these authorizations for your convenience.

Since time deadlines may be involved in your case, it is imperative that you act immediately. Please provide authorization for us to represent you or written authority to transfer your file by [*date*].

I want to make this transition as simple and easy as possible. Please feel free to contact me with your questions.

Sincerely,

[Assisting Attorney]
Enclosures

I want a member of the firm of [*insert law firm's name*] to handle my case in place of [*insert Affected Attorney's name*].

[Client] *[Date]*

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*].

[Client] [Date]

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:

[Client] [Date]

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:

[Client] [Date]

APPENDIX D

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S PRACTICE

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, and so on.

2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission for reset. (If making these arrangements poses a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)

3. Contact courts and opposing counsel immediately for files that require discovery or court appearances. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.

4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.

5. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.

6. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney and/or pick up a copy of the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately. (See sample *Letter Advising That Lawyer Is Unable to Continue in Practice* provided in this handbook.)

7. For cases before administrative bodies and courts, obtain permission from the clients to submit a motion and order to withdraw the Planning Attorney as attorney of record.

8. If the client is obtaining a new attorney, be certain that a new attorney has filed an appearance.

9. Select an appropriate date to check whether all cases have either a motion and order allowing withdrawal of the Planning Attorney or an appearance by a new attorney filed with the court.

10. Make copies of files for clients. Retain the Planning Attorney's original files. All clients should either pick up a copy of their files (and sign a receipt

acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and the file contains original documents that the client needs (such as a title to property), return the original documents to the client and keep copies for the Planning Attorney's file.

11. Advise all clients where their closed files will be stored and whom they should contact in order to retrieve a closed file.

12. Send the name, address, and phone number of the person who will be retaining the closed files to the Office of Professional Regulation, Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319.

13. If the Planning Attorney was a sole practitioner, try to arrange for his or her office phone number to be forwarded if the office no longer is staffed. This eliminates the problem created when clients call the Planning Attorney's phone number, get a recording stating that the number is disconnected, and do not know where to turn for information.

14. Contact the Planning Attorney's professional liability insurance carrier regarding extended reporting coverage.

15. If the Planning Attorney died, you may wish to speak to family members about submitting memorial notices or obituaries to appropriate publications. *In Memoriam* notices may be submitted by regular mail to the Editor, *The Iowa Lawyer*, 625 East Court Avenue, Des Moines, Iowa 50309, or by email to sboeckman@iowabar.org.

16. *(optional)* If you have authorization to handle the Planning Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine whether funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due and/or any money in trust. (To withdraw money from the Planning Attorney's accounts, you will probably need: (1) to be an Authorized Signer on the accounts; (2) to have a written agreement such as the sample provided in Chapter 4 of this handbook; or (3) to have a limited power of attorney. If none of these have been done and the Planning Attorney is dead, disabled, impaired, or incapacitated, you may have to request that the president of the county bar association or the Iowa Supreme Court Attorney Disciplinary Board petition the district chief judge to appoint a trustee under the provisions of Iowa Court Rule 35.16. If the Planning Attorney is deceased, other alternatives are to petition the court to appoint a personal representative under the probate code, or request appointment of a trustee under the provisions of Iowa Court Rule

35.17.) Money from clients for services rendered by the Planning Attorney should go to the Planning Attorney or his/her estate.

17. *(optional)* If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.

18. *(optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletter, *The Iowa Lawyer,* and other appropriate places.

19. *(optional)* If your arrangement with the Planning Attorney or estate is that you are to be paid for closing the practice, submit your bill.

20. *(optional)* If your arrangement is to represent the Planning Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.