



The Path Out: Succession Planning and Leaving the Practice of Law

June 10, 2019

11:20 a.m. – 12:20 p.m.

**Connecticut Convention Center
Hartford, CT**

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

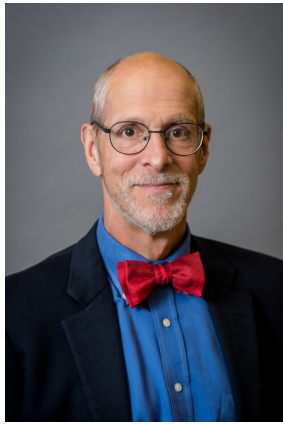
I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994



Paul T. Czepiga, JD, CPA, MBA

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- Estate planning
- Tax Planning
- Elder Law
- Special needs & disability planning
- Estate Administration
- Probate

Paul is a principal of Czepiga Daly Pope & Perri. In addition to being a lawyer, Paul is also a certified public accountant and has an MBA degree in business from Northwestern University.

Paul's estate and elder law planning consists of representing a range of clients, from high net worth individuals and families who require sophisticated techniques to accomplish their objectives of reducing estate taxes and preserving wealth for future generations, to older couples of modest means whose goal is to protect their assets from having to be spent for nursing home care.

Paul's general corporate practice consists of assisting his clients in the negotiations for and the purchase or sale of a business, general contract review, commercial financing closings, and entity selection and formation.

Paul has published several articles and has spoken on Elder Law, Estate Planning, Medicaid Planning, and business issues most recently before the Connecticut Society for Certified Public Accountants; the Central Connecticut Business and Estate Planning Council; The Connecticut Chapter of the National Academy of Elder Law Attorneys; The Association of Geriatric Case Managers; The American College of Health Care Administrators; The New Britain Foundation for Public Giving; the International Association of Financial Planners' Connecticut Chapter; and The Association of Long Term Care Financial Managers.

Paul is currently a member of the following professional organizations:

- The National Academy of Elder Law Attorneys (NAELA)
- The Connecticut Bar Association Sections on Elder Law, Estates and Probate, Corporations, and Taxation
- The Hartford Estate and Business Planning Council
- The Connecticut Society of Certified Public Accountants where he is currently Chairman of its Estates, Trusts and Gift Tax Committee and a member of the CSCP's Advisory Board.
- Corporator of Connecticut Community Care, Inc. Paul is also active in civic and charitable affairs and is past President of the Berlin YMCA and of the New Britain Lions Club.

In the past, Paul served as President and Board Member of the Connecticut Chapter of NAELA. He is a former Director of The Central Connecticut Business and Estate Planning Council, and former Chairperson of the CTCPA's Personal Financial Planning Committee.

Czepiga Daly Pope & Perri has offices in Berlin, Madison, New Milford, Simsbury and South Windsor.

Mark Dubois has practiced law for over 40 years. He is counsel with the New London firm of Geraghty & Bonnano. He was Connecticut's first Chief Disciplinary Counsel from 2003 until 2011. In that position he established an office that investigated and prosecuted attorney misconduct and the unauthorized practice of law. He is co-author of *Connecticut Legal Ethics and Malpractice*, the first book devoted to the topic of attorney ethics in Connecticut. He is a contributor to the *Connecticut Law Tribune* where he wrote the *Ethics Matters* column for over 7 years. He now writes on matters related to senior attorneys.

Attorney Dubois has represented many individuals accused of ethical misconduct and malpractice. He has also served as an expert witness on matters of ethics and malpractice. He has taught ethics and lawyering skills at UConn Law School and has taught ethics as Quinnipiac University School of Law where he was Distinguished Practitioner in Residence in 2011. He has lectured in Connecticut and nationally on attorney ethics and has given or participated in over 100 presentations and symposia on attorney ethics and malpractice.

Attorney Dubois was board certified in civil trial advocacy by the National Board of Legal Specialty Certification for over 20 years. He has tried many cases to conclusion including jury trials, court matters and administrative hearings. He is former president of the Connecticut Bar Association. He remains active in the Bar Association where he is a member of the Professional Discipline, LGBT and Unauthorized Practice groups. He is also a member of the New Britain, New London, and American Bar Associations, the American Board of Trial Advocates and the Association of Professional Responsibility Lawyers. He is the recipient of the Quintin Johnstone Service to the Profession Award in 2012, the American Board of Trial Advocacy, Connecticut Chapter, Annual Award in 2007 and the Connecticut Bar Association's Edward F. Hennessey Professionalism Award in 2019.

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Kara A.T. Murphy has been a member of Tierney, Zullo, Flaherty & Murphy, P.C. for the past twenty years. Her practice focuses on general civil litigation, personal injury, and municipal law, including the representation of municipal electric and water utility companies. Ms. Murphy previously practiced with Milano & Wanat, LLC and clerked for the Hon. Robert Satter in Hartford Superior Court.

Ms. Murphy has been a member of the Connecticut Bar Association Board of Governors and House of Delegates for the past eight years and serves on the Legislative Policy & Review Committee and Audit Committee. She formerly served on the Board of Directors, Women in the Law Committee, and Bench/Bar Committee of the Fairfield County Bar Association. Ms. Murphy is a former member of the local panel of the Statewide Grievance Committee for the Fairfield Judicial District. She is currently serving a second term as a member of the Board of Ethics for the City of Norwalk.

Ms. Murphy earned her B.A., *cum laude*, Honors in History with thesis, from Lafayette College. Thereafter, she earned her J.D. from the University of Connecticut School of Law. Ms. Murphy served as Research Editor of the *Connecticut Insurance Law Journal* and authored "Pleading the Policy Limit as a Special Defense: An Attempt to Clarify Connecticut Uninsured Motorist Coverage," 1 Conn. Ins. Law J. 167 (1995).

Jonathan M. Shapiro

Jonathan M. Shapiro joined Shapiro Law Offices as a partner in 2010. His practice concentrates on corporate transactions, employment matters, and complex commercial and general litigation, as well as in arbitrations and mediations. He represents individuals and businesses in a wide variety of matters including breach of contract actions, non-compete claims, unfair trade practice claims, trade secret misappropriation claims, commercial lease disputes, employment and insurance coverage disputes, breach of fiduciary duty claims and product liability claims. Jonathan also regularly serves as "local counsel" for non-Connecticut-based firms that are admitted to practice pro hac vice. Jonathan also counsels clients in a number of other areas including employment law, contract negotiations, commercial transactions, and business formation.

Jonathan is admitted to practice in Connecticut and New York, as well as before the United States District Courts for the Southern and Eastern Districts of New York and the District of Connecticut. He was recognized as a Connecticut Super Lawyer "Rising Star" in 2010, 2011, 2012 and 2013, and was honored by the Fairfield County Business Journal at the 2011 40-Under-40 Awards Dinner. In November 2012, Jonathan was named as a "New Leader in the Law" by the Connecticut Law Tribune. In 2014, 2015 and 2016, Jonathan was recognized as a Connecticut Super Lawyer.

Jonathan speaks regularly at seminars on a broad range of topics and has authored several articles, including

- Moderator, The Battle Behind the Scenes: Handling Difficult Clients, Hostile Judges and Unethical Attorneys During Litigation, American Bar Association, Litigation Section Annual Conference (New Orleans 2015);
- Co-Author, "Hold It! Avoiding Electronic Discovery Disasters with Effective Litigation Holds" (Elizabeth S. Fenton & Diana Rabeh, Reed Smith) and moderator on corresponding program at American Bar Association, Litigation Section Annual Conference.
- Author, "Extra-Territorial Application of Unfair Trade Practice Claims," American Bar Association business Torts Journal;
- Moderator, Going Commando: Lessons from the Field on Starting Your Own Practice, Connecticut Bar Association Young Lawyers Section;
- Panelist, Career Transitions, University of Connecticut School of Law Alumni Association;
- Panelist, CAPABA Lunar New Year/Networking, Connecticut Asian Pacific Bar Association;
- Panelist, Contract Negotiations, Meeting Planners International-Connecticut River Valley Chapter;

Jonathan is active in the following organizations:

- Connecticut Bar Association, President (Past Vice-President, Past Chair Membership Committee, and Past Chair Young Lawyers Section; Assistant Treasurer-Secretary 2013-2014)
- March of Dimes Connecticut Chapter State Board (Volunteer Development Committee Chair; Past Chair State Board, 2013-2014)
- Membership Chair, American Bar Association Business Torts Committee
- Member, Middlesex County Bar Association
- Corporator and Philanthropy Counsel Member, Middlesex Hospital
- Vice President, Congregation Adath Israel

Prior to joining the firm, Jonathan was a senior associate at Day Pitney LLP in its Stamford, Connecticut office. He earned his B.A. in History from Boston College in 1998 and his J.D. degree from the University of Connecticut School of Law in 2001.

Jonathan lives in Middletown with his wife and children. In his spare time he enjoys running, biking, reading, and spending time with his family.

The Path Out: Succession Planning and Leaving the Practice of Law (CLC2019-B01)

Agenda

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| 11:20 – 11:25 a.m. | Welcome and Introduction
Speaker: Jonathan M. Shapiro , Shapiro Law Offices |
| 11:25 – 11:35 a.m. | Real-Life Examples of Lawyers' Untimely Death and Problems that Followed
Speaker: Kara A.T. Murphy , Tierney Zullo Flaherty & Murphy PC |
| 11:35 – 11:55 a.m. | The Mechanics of Succession Planning and Implementation
Speaker: Paul T. Czepiga , Czepiga Daly Pope & Perri |
| 11:55 – 12:15 p.m. | Ethics Issues Related to Succession in a Law Firm/Office Environment
Speaker: Mark A. Dubois , Geraghty & Bonnano LLC |
| 12:15 – 12:20 p.m. | Q & A |

Attorney Succession Planning Thoughts

Rev. 4-14-19

I. Solo or Small Firm

1. Starting Point: What do you do with your 40+ years of work?
2. Are solos different than small firms?
 - a) Small firm has a 'built in' successor
3. Goals and Motivation for a Succession Plan:
 - a) protect clients
 - b) protect staff
 - c) ethically required
 - d) morally required
 - e) for profit
 - f) protect spouse/family/beneficiaries
4. What are the Ethical Rules in this area?
5. What resources does the CBA, ABA, NAELA or other specialty organizations have?
6. Use of consultants and accountants
7. Should you be your own lawyer?
8. When do you start to plan your succession (hint: early on)?
9. How long will it take?
10. How many failed attempts can you take before your timeline runs out?
11. Notification requirements to clients (past/present)
12. Notifications to others: referral sources, Rules Committee
13. Is manner and content of notice dependent on your goals?
14. Merger vs. Sale vs Walk Away or Give Away?
15. Stand-by Agreement for solos (ethical or moral obligation)
16. Post consummation of the 'deal'—do you then walk away or transition?

17. Who is a possible successor? Associates, Partners, competitors, complimentary law practices, those to whom you currently refer matters or who refer to you

18. Removal of you from company obligations (bank loans/guarantees/contracts)

19. Various triggers for a succession plan:

Death

Disability

Voluntary Retirement

20. Do you get paid?

19) How much do you get paid?

20) How to determine compensation (if desired):

Valuation expert

Client retention (%%%) but for how long

Industry Formula (X times gross revenues or X times normalized earnings]

EBITDA (earnings before interest, taxes, deprec/amort) =operating profitability

Consulting Agreement

Non-compete agreement

Fiduciary roles retained (Ex'or, T'ee)

Cash or payout over years

21) Clawback if things don't go as planned post-succession

22) Do you even know what you have to sell? Why should I 'buy' you?

a) Will inventory

b) Forms library

c) Processes

d) Good staff

e) Trusts inventory

f) Active trusteeships

g) Can you name your successor if you are a fiduciary?

23) Relevant metrics and do you know yours?

24) What is included/excluded in sale?

25). How handle Work in process and Retainers? How/when do you get paid for Est Admin/Medicaid/Est Planning/Other?

26) What name?

II. Small Firm

1. What is good for the goose is good for the gander. A zero sum game?
2. Who has the client relationships? Are you even needed? (cow and milk) (shopping around)
3. Protect yourself early on:
 - a. Employment agreements with attys
 - b. Non-compete agreements with attys
 - c. Confidentiality agreements with attys
 - d. Buy-Sell Agreement (cow and milk) (shopping around at last minute)
 - e. Enforceability of restrictions
4. Protect yourself in By-laws/Operating Agreement/Partnership Agreement with voting %% as appropriate
5. For remaining partners, be sure to avoid probate to avoid public disclosure of value, especially if a sole remaining partner wants to sell after death of a partner
6. Buy-Sell Agreements

III. Miscellaneous

Tail policy for liability

Health insurance

Income tax issues – acquirer wants to ensure deductibility of what it pays out

What do you do with your life now?

Any personal guarantees from acquirer (as to payments, staffing, location, etc)?

Life insurance on the acquirer

Due Diligence on both sides

SWOT analysis

Cultures

ETHICS ISSUES RELATED TO WINDING UP A LAW PRACTICE

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- Advance Exit Plan
- Sale of a Law Practice
- Preserving/Disposing of Records
- IOLTA Issues
- Malpractice Exposure
- Surrender/Preserving the Law License

The Advance Exit Plan

THE PATH OUT

A GUIDE FOR LAWYERS PLANNING FOR THE FUTURE

- **STEP 1:** Designate an Assisting Attorney to manage or close your practice in the event of your disability, incapacity, retirement or death.
- **STEP 2:** Prepare written instructions to your family, your designated Assisting Attorney, your nominated executor, and your key office staff.
- **STEP 3:** Discuss your Advance Exit Plan with the appropriate persons
- **STEP 4:** Your Advance Exit Plan should describe arrangements you enter into with your designated Assisting Attorney

The actors in this drama:

- The Planning Attorney
- The Assisting Attorney
- The Fiduciary Attorney

Sale of Your Law Practice

Rule 1.17 allows sale of whole practice, practice area or good will.

Rule 5.4 allows payment for sale to representatives of dead or disabled lawyer's estate.

Rule 5.6 prohibits non-competition agreements by lawyers but 1.17 prohibits continued work in area sold.

Retirement plans in firms not subject to rule.

Rule does not apply to sale of assets.

Preserving/Disposing of Records

- CBA Guidelines <https://www.ctbar.org/about/governance/board-of-governors/file-retention-guidelines>
- Rule 1.15(j)
- Grievance Statute of Limitations
- Special Considerations Concerning Intent in Estate Planning

CBA File Retention Guidelines

- **Guideline 1.** Notwithstanding any of the other policies set forth below, the retention or destruction of documents may be determined by written agreement between the attorney and the client.
- **Guideline 2.** A copy of a document need not be kept after the original has been returned to the client or other owner.
- **Guideline 3.** All documents shall be kept seven years from the date of completion of services rendered by an attorney.
- **Guideline 4.** All original documents signed by the client and documents conferring or imposing legal rights or obligations shall be kept seven years from date of such signing or the cessation of such rights or obligations whichever is longer. No such document shall be destroyed until the client or owner is mailed written notice at least 30 days before destruction of the document.
- **Guideline 5.** Documents may be copied and retained in any medium which accurately depicts the original document and from which accurate copies can be made. The originals of any documents so copied, other than those documents set forth in paragraph 4 above, need not be kept after their copying.
- **Guideline 6.** Any document which is kept as a permanent public record need not be kept after its recording. No such document shall be destroyed until the client or owner of the document is mailed written notice at least 30 days before destruction of the document.
- **Guideline 7.** Subject to the above guidelines, upon termination of practice, any documents still being retained by the attorney should be returned to the client or the client notified of any successor attorney agreeing to take upon the obligations of retaining those documents.

1.15(j) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

- (1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- (2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
- (3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;
- (4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- (5) copies of bills for legal fees and expenses rendered to clients;
- (6) copies of records showing disbursements on behalf of clients;
- (7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;
- (8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;
- (9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and
- (10) copies of those portions of client files that are reasonably related to client trust account transactions.

Special IOLTA Issues

- Excess funds left in IOLTA Account
- Random Audits

Malpractice Exposure

Extended Reporting Period Endorsement to MP Policy.

https://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/lpl_tail_coverage_faq_glossary.authcheckdam.pdf

Traps to avoid/be wary of.

Surrendering/Preserving The Law License

Annual Registration

PB 2-26, 2-27(d)

MCLE compliance

PB 2-27A(5) and (6) exceptions

P.B. 2-55 Revocable vs. 2-55A Permanent Retirement

Of Counsel/Dabbling/Pro Bono/Referral Fees

**AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LAWYERS' PROFESSIONAL LIABILITY**

EXTENDED REPORTING ("TAIL") COVERAGE

APRIL 2013

Section A: Terms to know regarding Extended Reporting, or "tail," Coverage:

Bare, "going bare": Not what you do in the bathtub, but rather, a lawyer who practices for a period of time without professional liability insurance coverage.

Career Coverage: A policy or policy provisions that provide coverage for claims arising from the acts, errors or omissions of an insured when providing legal services at any law firm during or prior to the current policy period. Most professional liability policies for law firms of size only provide coverage for claims arising from work done on behalf or in the name of the insured law firm, but career coverage covers claims arising from work done at any prior point in a lawyer's career, irrespective of where the lawyer worked. Such coverage may be limited or non-existent if the lawyer is joining another firm, as that firm's insurance carrier (or the firm itself) may not wish to cover such exposure when it doesn't have to do so.

Claims-Made and Reported Coverage: Most professional liability policies are written on this basis. In order for a claim to be covered, the claim must be first made against the insured lawyer and reported to the insurance company during the policy period. Some policies may be "claims-made" forms, where the claim must be made during the policy period, but the insured's requirement to report the claim to the insurance company may extend to a time period beyond the expiration of the policy period (such as "within a reasonable period of time" or "as soon as practicable").

ERC: An acronym for extended reporting coverage. Coverage is provided for claims made and reported after the expiration of a claims-made policy, if such claims arose from acts or omissions occurring during an insured period of time, before the ERC was issued or effective.

ERP: Extended reporting period. May be used interchangeably with the term ERC, although this term more accurately refers to the length of time ERC is provided. The period of time during which a claim arising from an act or omission occurring prior to the inception date of the ERP can (in most cases) be reported and covered. Most professional liability policies provide the insureds with options to purchase ERPs of varying length.

Occurrence Coverage: A policy that provides coverage for claims arising from acts or omissions occurring during the period of time covered by the policy, regardless of when the claim is actually made. This form of coverage is very familiar to most consumers, and while it is used for many casualty insurance products (such as auto and homeowners insurance), it is rarely used for professional liability coverage.

Extended Reporting (“Tail”) Coverage

Prior Acts Coverage: Coverage for claims arising from acts, errors or omissions occurring at some point prior to the inception date of the policy. A policy providing “full prior acts” coverage covers claims arising for work done in the name or on behalf of the insured firm without a time limitation. Some policies have a “retro date” or retroactive date, which limits prior acts coverage to claims arising for work done in the name or on behalf of the insured firm on or after the retro date. Whether or not prior acts coverage is limited only for work done on behalf of or with the named insured firm will depend upon the policy provided by the particular insurance company.

Retro Date: See Prior Acts Coverage, *supra*.

“Tail” Coverage: A lawyer’s exposure for claims arising from work done during a particular policy period extends well past the expiration of the policy period, since such a claim may not be made for several years after the work is performed. This exposure is often referred to as “tail exposure”, because it trails the attorney like a tail trails an animal. “Tail coverage” is generally referred to as the coverage for this exposure provided under an Extended Reporting Period (ERP) or ERC, *supra*.

Section B: FAQ’s Regarding Extended Reporting Coverage, and coverage for “prior acts.”

This topic may be important to you if any of the following occur during your legal career:

- You change firms;
- A law firm you work for merges with another firm;
- The lawyers in your firm decide to dissolve the firm; or
- You retire from practice, or permanently leave the practice of law.

What is extended reporting coverage (ERC), sometimes referred to as an extended reporting period (ERP) or “tail” coverage?

As with most forms of errors and omissions insurance, almost all lawyers’ professional liability insurance (LPL) is written on a claims-made basis. With many policies, in order for a claim to be covered, the claim has to be first made against the policyholder *and* reported to the insurance company during the policy period (claims-made and reported coverage). If a policy expires, and a claim is thereafter made, the lawyer or firm will not have coverage under that policy. Some policies will provide coverage for claims made during the policy period, provided that the claim is reported within a reasonable time after the policy expiration date. These policies are known as “claims made” policies. ERC provides coverage for claims arising from work performed prior to the expiration of the policy period that are made and reported after the time in which to report a claim has expired.

Why is this coverage sometimes referred to as “tail” coverage?

Lawyers’ professional liability insurance is often called a “long-tail” line of insurance. An act or omission may take place today, but a claim arising from that act or omission may not be discovered or made against the lawyer for a considerable period of time, sometimes years later. Compare such claims to the typical auto accident or property damage insurance claims. The vast

majority of those claims are reported to an insurance company within a relatively short period of time after the event giving rise to the claim. A significant percentage of LPL claims are not made, and therefore not reported, for some time after the act or omission giving rise to the claim, hence the term “long-tail” line of insurance.

Is such coverage automatically provided after a claims-made and reported policy expires?

The answer to this question depends upon the specific policy language. Many policies provide a *limited* period of time in which to report a claim after a policy expiration date, usually between 30 to 60 days. Some policies offering such coverage require that the claim be first made before the expiration date of the policy, but provides additional time after expiration to report the claim to the insurer. A few policies will provide “free” ERC to an insured for a much longer period of time, provided certain conditions are met. These conditions usually include a certain number of years insured by the given insurer, and retirement from law practice by the lawyer. Such policies are by far the exception, not the rule.

Most insurers will, for additional premium paid at the time of exercise, offer an optional ERC. The insured typically may purchase ERC for a period of one year, two years, three years, five years, and, under some policies, an unlimited time period. The cost is generally a multiple of the last annual policy premium, and depends upon the length of time selected for the ERC.

Furthermore, most insurers require the purchase of ERC to take place within a certain number of days from the date of policy expiration, or the option to purchase this coverage will be lost.

Some policies require that ERC be purchased, if at all, by the law firm, and it is not available to individual attorneys

If a lawyer leaves a law firm for other employment, how can the lawyer be certain that she or he remains covered for what she/he did while working for the law firm?

If the law firm remains an ongoing entity, the lawyer is usually covered as a former member or employee of the firm for claims arising from services rendered while she/he was with the firm, assuming the firm retains its claims-made coverage. However, if the firm divides or dissolves at some point thereafter, and does not buy ERC for the firm upon its termination, then there may be no coverage for the lawyer for any claim made thereafter.

If a lawyer leaves one firm and joins another, is it possible to purchase coverage for acts or omissions that occurred prior to joining the new firm, thus avoiding any issue with respect to having ERC for prior acts or omissions?

In most cases, the new firm’s insurance policy will by its terms cover only the lawyer’s acts on behalf of the new firm. Most carriers will *not* agree to provide coverage for claims arising from acts or omissions of the lawyer prior to joining the firm (“career coverage”), even if the new firm wishes to secure this coverage for its new attorney. There are exceptions to this rule, however, with some commercial insurers and state bar-related insurers either providing career coverage in

the policy form or willing to endorse the policy (with or without additional premium) to provide such coverage. The lawyer may also be able to cover prior acts or omissions by purchasing ERC when leaving a firm, if the option for an individual ERC is available in the prior firm’s policy.

Example: Lawyer Jones leaves law firm Blood, Swet & Howe and joins firm Silver & Gold. The policy for Blood, Swet has no provision for the purchase of an individual tail. The insurer for Silver & Gold only agrees to cover claims arising from acts or omissions of Jones after joining that firm. “Career coverage” for Lawyer Jones is not available with Silver & Gold. In the event that Blood, Swet dissolves or merges with another firm without purchasing ERC that covers lawyers in the firm or formerly in the firm, Jones may have no coverage for any claim later made arising out of her work while employed with Blood, Swet.

A lawyer wishes to purchase ERC, but the cost is prohibitive. Are there possible options to assist with the purchase?

Some insurers may allow the premium for the ERC to be paid in installments over time. If an installment premium is not paid, the ERC will be cancelled. It may also be possible to purchase an ERC with lower limits of liability than was provided by the expiring policy, thus reducing the cost of the ERC. Of course, the lawyer or law firm should determine if it is prudent to do so. This option may not be widely available, but some insurers are willing to negotiate such modification of limits.

If a lawyer does work after the ERC is in place, and a claim arises from the services performed after the claims-made and reported policy expiration or termination date, but within the ERC period, is that claim covered by the ERC?

No. The ERC only covers claims arising for professional services rendered prior to the expiration or termination of the policy that are made and reported subsequent to the policy expiration or termination date and prior to the end of the ERC termination date.

Can a lawyer buy his/her own ERC coverage when leaving a firm, or at some point after leaving the firm, if it becomes necessary to have ERC in place for services rendered while with the firm?

The answer depends in part upon what the firm’s policy provisions allow. Most often, the lawyer will not be able to buy his/her own ERC when leaving the firm (unless the attorney thereafter ceases to practice law, discussed below), in part because the insurer continues to cover the lawyer under the firm’s policy, and to provide additional coverage to the lawyer could create additional exposure for the insurer for a claim, when no such additional exposure was contemplated. Insurers may sell some form of individual ERC to a departing lawyer, but this coverage may be conditioned upon the lawyer’s retirement from private practice, disability, or death. Some policies may also provide for individual ERC if the lawyer leaves the private practice of law, such as becoming a judge, or becoming employed in a non-legal or “in-house” capacity.

Furthermore, ERC is generally not commercially available to a lawyer or law firm as a “stand alone” insurance product. As a rule, ERC is only available in conjunction with a previously issued claims-made policy. There are select markets that may provide stand-alone ERC, but this is not common, and typically applies to larger law firms facing dissolution or merger.

A lawyer decides to leave a law firm, but do some limited amount of solo private practice. Can that lawyer purchase coverage for his/her prior acts or omissions while with the firm?

There may be several options for a lawyer to secure coverage for his/her prior acts in this particular circumstance. *First*, it should be remembered that for so long as the lawyer’s prior firm remains covered under a typical claims made policy, that lawyer will have coverage for claims arising from work performed while at that firm. *Second*, a lawyer leaving a firm and going solo may be able to purchase his/her own “prior acts” coverage in connection with a policy issued to cover his/her solo activities (see below). Some insurers that provide “prior acts” coverage in these cases may refuse to do so, if the lawyer left a large law firm where a self-insured retention, or deductible amount, was very high, often six-figures or possibly even greater. The new insurer may consider such retention to be the equivalent of having been uninsured. *Third*, there may be an option under the lawyer’s former firm’s policy to purchase an individual ERC.

Some insurers may offer a “part-time” policy to lawyers who are doing a limited amount of work. Even though the policy is issued on a part-time basis, at least one state bar-related insurer will cover full-time prior acts under such a policy.

Example: Lawyer Smith leaves a law firm, and begins his own solo practice. Whether or not his prior firm maintains coverage for claims arising from acts or omissions while with the firm, Lawyer Smith may be able to find insurance coverage that will cover claims arising from acts or omissions prior to the start of the solo practice. Note a possible exception: where prior acts coverage is conditioned upon the insurer having provided coverage for the prior firm.

Is the length of ERC always limited in time to a certain number of years, or can such coverage be purchased that never expires?

The answer to this question depends upon the policy purchased. Many insurers will provide an option of ERC for a limited period of time, but some also provide the option of an “unlimited” period of time in which a claim can be reported. In other words, the ERC never terminates.

A lawyer has practiced “bare,” or without insurance, for a period of time. Can that lawyer buy a claims-made policy that will cover prior acts or omissions, in a sense, ERC, even if they have not been previously insured?

Most insurers will not agree to cover claims arising from services performed during a period of time for which the lawyer had no insurance in place. There may be exceptions to this general rule.

THE PATH OUT

A GUIDE FOR LAWYERS PLANNING FOR THE FUTURE

**Connecticut Bar Association
30 Bank Street**

New Britain, CT 06050-0350

30 Bank Street
New Britain, Connecticut

Dear CBA Member,

Too often, lawyers forget their own practices, their own partners and staff, and their own families when it comes to planning for both the expected and the unexpected. The sudden death or incapacity of a lawyer can cause havoc with the lawyer's clients, with their office, and with the courts. A law practice is an asset which, if handled properly, can be sold for value. But a law office where the solo lawyer has not planned for the future can be an albatross, causing great harm to many.

What follows is the beginning of what we at the Connecticut Bar Association hope will be an ongoing project providing "open source" documents and information to you, our members, to assist in planning for the future. These materials have been collected from many sources, not the least of which is the fine work done by the New York and Florida bars. Thus, we claim no rights of ownership. Feel free to use them, modify them, or reject them.

If you have good documents or valuable information of your own on this topic, feel free to share this with us. Working together, we plan to create a resource that will assist the bar in planning for the future and protect the public, the courts, our clients and our loved ones. Collectively fostering such a project represents the best of professionalism.

Sincerely,

Jonathan M. Shapiro, President

INTRODUCTION

We do not like to think about unexpected events that could cause us to abruptly cease practicing law. However, events such as accidents, unexpected illnesses, and untimely death are known to occur. If any of these events were to happen to you, have you made adequate plans to assure that your clients' interests will be protected? If not, this handbook was prepared to help you start immediately to protect your interests and those of your clients.

A lawyer has a duty of competent representation pursuant to Rule 1.1 of the Rules of Professional Conduct. This includes making arrangements that will safeguard the client's interests (including the integrity of any trust moneys, confidentiality of information, and the continuing viability of the client's legal matter) in the event of the lawyer's death, disability, impairment, or incapacity. ABA Formal Op. 92-369. Many malpractice carriers require that the lawyers they insure make arrangements for the appropriate disposition of client matters in the event of the insured lawyer's death or disability.

The commentary to Rule 1.3 (Diligence) tells us that part of ethical lawyering is planning how the needs of clients will be met if a lawyer becomes disabled, dies, or is otherwise unable to continue in practice. By arranging in advance for the temporary management or closing of your practice, your ongoing matters will be handled in a timely manner and there will be less likelihood that a court date will be missed or a closing delayed (for example, because of an inability to access your escrow account), or clients' interests otherwise prejudiced. Funds and property belonging to your clients will be returned to them promptly, as required by Rules 1.15 and 1.16. You also will be assured that your clients' files will be protected and that the bookkeeping records will be maintained as required by Rule 1.15.

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

Following this narrative is a compilation of materials that will assist you in this process. It has been designed to encourage you to take steps to properly protect your clients and to carry out your wishes if you personally are unable to act. We have included forms, FAQ's and checklists which raise issues which should be taken into consideration in making plans to protect clients' interests in the case of the sudden unavailability of a sole practitioner to handle his/her practice, or in closing one's own office or that of another attorney, or in temporarily assuming responsibility for another attorney's practice.

TERMINOLOGY

The term "Assisting Attorney" is used throughout this handbook. It refers to the lawyer(s) you have made arrangements with to close down your practice or to handle it while you are incapacitated.

The term "Authorized Signer" is used to refer to the person you have authorized as a signer on and fiduciary for your lawyer trust account.

The term "Planning Attorney" refers to you, your estate, or your personal representative.

The term “Acquiring Attorney,” refers to one who buys a law practice.

GETTING STARTED

First, you must find one or more attorneys to maintain or close your practice in the event of your death, disability, impairment, or incapacity. The arrangements you make for closure of your office, or the temporary takeover of your practice, should include a signed consent form authorizing one or more Assisting Attorney(s) 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 or transfer of your practice.

The agreement should 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.

At the outset of your negotiations with the Assisting Attorney, it is important for the two of you to nail down the scope of the Assisting Attorney’s duties to both you and your clients. If the Assisting Attorney is representing your interests as your attorney, he or she may be prohibited from also 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 not inform a client of your legal malpractice or ethical violations, unless you consented in writing. However, if the Assisting Attorney is expected to represent your clients, he or she may have an ethical obligation to inform the client of your errors or omissions.

In either event, the Assisting Attorney 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 in transferring clients’ files. In the latter case, the conflicts check must occur before the file review.

Not only do you need to have at least one Assisting Attorney, you may also need to recruit an Authorized Signer who can sign on your trust account under these circumstances. The Authorized Signer may or may not be someone other than the Assisting Attorney. You may want a separate Authorized Signer to provide 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 could arise if the trust account does not balance or there is some question about who owns the funds in your clients’ funds account. Not surprisingly, there have been occasions when a disabled attorney’s trust account contained funds belonging to him, such as earned fees, but his family was unable to access them because the trustee believed that if money was in the clients’ funds account it must belong to clients.

This planning process, which is intended to protect your clients’ interests in the event of your disability or death, involves some difficult decisions, including: the type of access that the Assisting Attorney and/or Authorized Signer will have; the conditions under which they will have access; and who will determine when those conditions are met. Commentators have expressed the belief that these decisions are the hardest part of this advance planning.

For example, if you are incapacitated, you may not be able to give consent to someone to

assist you. Have you determined under what circumstances you want someone to assert the right to help you or take over your practice? Who decides that you are incapacitated and what criteria will be used?

One suggested approach is to give the Assisting Attorney and/or the Authorized Signer access during a specific time period or after a specific event and to allow the Assisting Attorney and/or the Authorized Signer 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 Authorized Signer) until he or she determines that the specific event has occurred. A third approach is to provide the Assisting Attorney and/or Authorized Signer with access to records and accounts at all times. In accordance with Rules 1.6 and 1.15, access to and control of both client files and client moneys should be restricted to a licensed attorney.

If you want the Assisting Attorney and/or the Authorized Signer 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. You may want to sign a limited power of attorney in favor of the Assisting Attorney and/or the Authorized Signer. 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 Authorized Signer 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 Authorized Signer.

Another best practice is to consult the manager of your bank with regard to the mechanics of how an Assisting Attorney or an Authorized Signer will take over management of your accounts. Some banks use their own power of attorney forms. Be aware that the 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) to 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. Then, when the event occurs, the trusted friend or family member provides the Assisting Attorney and/or the Authorized Signer 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, are the Assisting Attorney and/or the Authorized Signer authorized to sign on your accounts only after obtaining a letter from a physician that you're disabled or incapacitated? Is it when the Assisting Attorney and/or the Authorized Signer, 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 the Authorized Signer must review the specific terms and be comfortable with them.

The same issues apply if you choose to have a family member or friend hold a general power of attorney until the events 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 the Authorized Signer access at all times. With respect to your bank accounts, this approach requires going to the bank and having the Assisting Attorney and/or Authorized Signer sign the appropriate cards and paperwork. When the Assisting Attorney and/or Authorized Signer are 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 Authorized Signer to carry out office business even if you are just unexpectedly delayed from vacation.

Adding someone as 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, it had better be an attorney you know and trust. Your choice of signer is crucial to the protection of your clients' interests, as well as your own.

CREATE THE ADVANCE EXIT PLAN

STEP 1: Designate an Assisting Attorney to manage or close your practice in the event of your disability, incapacity, retirement or death. This may be accomplished by a limited power of attorney, a comprehensive agreement with detailed powers, or a short form authorization and consent form to close or manage a law practice. Samples of such forms are set forth in the Appendices. If you are a professional corporation, resolutions may be necessary authorizing you, as sole shareholder and director, to appoint another attorney to manage or close your practice. Suggested forms are found in the Appendices.

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

- General information and guidance to minimize uncertainty, confusion and possible oversights;
- Authorizations to release medical information (required by HIPAA) that may be needed to determine your incapacity and for your Assisting Attorney to seek to have you placed on inactive status with the court in accordance with Practice Book 2-56 et seq., and/or to seek to be appointed trustee pursuant to Practice Book 2-64;
- Information on where a complete inventory of your open files can be found, including passwords and other information needed to access case management software;
- Specific and detailed information and authorizations needed to run and transition or close your law practice, including lists of all bank accounts, lists of all insurance policies and their physical location, computer passwords, e-filing passwords, information and data concerning leases or other

arrangements related to office space, equipment, phones, computer systems, websites, subscriptions and other details related to day to day operations;

- Steps to be taken to assure that your written instructions are updated and reviewed periodically for completeness and accuracy.

STEP 3: Discuss your Advance Exit Plan with the appropriate persons (e.g., your family, your designated Assisting Attorney, your nominated executor, and your key office staff) to avoid confusion or delay in the event of your disability, incapacity, retirement or death. For example, your executor should be aware of your wishes with respect to your practice in the event of death, including any instructions you may have given to an Assisting Attorney and/or Authorized Signer. Not only will this protect your practice, but it will also save considerable time and expense that may be incurred in the administration of your estate.

STEP 4: Your Advance Exit Plan should describe arrangements you enter into with your designated Assisting Attorney and should cover the following:

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

Your Advance Exit Plan might also include sample letters notifying clients of your inability to continue in practice, and arranging for transfer or return of files. See “Letter Advising That Lawyer is Unable to Continue in Practice” and “Request for File/ Acknowledgement of Receipt for File/Authorization for Transfer of Client File”. In the Appendices you will find a helpful list of questions and answers on the subject of document destruction and preservation, providing you with guidance on file disposition.

If you are retiring, you should prepare a letter to your clients advising them of your retirement, the need to obtain new counsel, and a procedure for transfer of their files. See “Letter from Planning Attorney Advising that Lawyer is Closing His/Her Office.” If there are other attorneys in your firm who would be available to represent the clients in the event of your own inability to practice, your Advance Exit Plan should include a letter from your colleague(s) to your clients advising them of your disability and their availability to continue handling their matter.

Your Advance Exit Plan also should include instructions as to:

- Disposition of closed files;
- Location of wills and other original client materials;

- Disposition of your office furnishings and equipment;
- Authorization to draw checks on your office and trust accounts;
- Payment of current liabilities of the office;
- Billing fees on open files;
- Referral files on which you may be entitled to fees;
- Collecting accounts receivable;
- Access to important information (e.g., passwords to your computer); and
- Insurance matters.

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

- Wind down your business financial affairs;
- Provide your clients with a final accounting and statement of work done by you/your office;
- Collect fees on your behalf;
- Liquidate or sell your practice;
- Act on behalf of your PC or your LLC in the event of your death or disability, See Appendices sample “Waiver of Notice of Special Joint Meeting of the Sole Shareholder and Sole Director of Corp.” and “Minutes of the Special Joint Meeting of the Sole Shareholder And Sole Director of Corp.”

INCLUDE FAMILY AND STAFF

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

- All pertinent personal and family information and financial information;
- Identification and location of all estate planning documents, including original

- wills/trusts;
- Location of personal and business insurance records, among other things.
- Guidance to your staff should include directions as to:
- Notifying your professional liability carrier;
- Notifying all courts, boards and administrative agencies where your matters are pending;
- Closing your office;
- Reviewing all depositories, including trust accounts and safe contents;
- Coordinating with your accountant.

COMPENSATING YOUR ASSISTING ATTORNEY, AUTHORIZED SIGNER AND STAFF

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

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

In the case of death, since your estate will be responsible for payment to the Assisting Attorney or Authorized Signer, your executor or other personal representative should be notified in advance of any arrangements you may have made with regard to this issue. You may want to consider reiterating those instructions in your will, especially if you neglected to make such arrangements in a separate written agreement. As in the case of disability or incapacity, since your practice may be your only probate asset and insufficient to cover the cost of compensation to the Assisting Attorney or Authorized Signer and disbursements incurred in closing your practice, you may want to consider purchasing an insurance policy naming the estate as beneficiary and specify in your will that the proceeds from the policy be used for this purpose.

OTHER STEPS

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

- Making sure that your office procedures manual explains to your staff or your Assisting Attorney how to produce a list of client names and addresses for open files;
- Keeping a calendaring system with all deadlines and follow-up dates;
- Thoroughly documenting client files including contact information;
- Keeping your time and billing records up-to-date;
- Familiarizing your Assisting Attorney and Authorized Signer with your office systems;
- Reviewing and updating on a regular basis your written agreement with your Assisting Attorney;
- Periodically purging old and closed files;
- Periodically communicating with clients for whom wills or other original documents are held by your firm to confirm that contact information and addresses are up-to-date and documents are still relevant.

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

SPECIAL CONSIDERATIONS IN THE EVENT OF DEATH

Whether or not you have an Advance Exit Plan, it is critical that you have a current will so that management and closure of your law practice can be addressed without delay and attendant harm to clients. In the event of your death, your practice will be an asset of your estate. Your personal representative, be it executor or administrator, is the person ultimately responsible for the administration of this asset, including insuring that all obligations to clients are met.

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

If you have not designated an Assisting Attorney or Authorized Signer in advance of your death, your executor or the superior court may appoint an attorney to manage and close (or assist in selling) your practice. You may want to include language in your will that provides guidelines to your executor and any attorneys that your executor may retain regarding the management/closing of your practice. For example, you may want to name specific attorneys to take over certain of your files and enumerate powers to close your practice similar to those set forth in an Advance Exit Plan. If your nominated executor is not an attorney, it is important that he or she avoid

inappropriate access to client files and information and rely instead, on an attorney or office staff to attend to these matters.

You also should consider a source of funding to compensate your designated Assisting Attorney, Authorized Signed, office staff, or attorney and staff retained by your executor or administrator who will be working during this transition period. Since your practice may be your only probate asset and your operating account may not have sufficient funds for this purpose, you may want to consider an insurance policy as a source of funding to defray this expense. The beneficiary of the policy could be the estate with specific instructions in your will that proceeds be used for this purpose.

SALE OF A LAW PRACTICE

Your practice also may be an asset that can be sold to benefit you and/or your family or estate if you are no longer able to practice. Taking the appropriate steps as outlined above will not only protect your clients, but also may be necessary to preserve the value of your practice so that it may be transferred to another attorney or firm. Included in these materials are guidelines for the transfer of a practice, detailed suggestions for structuring such a sale, and a sample agreement and forms that would be relevant if your practice is sold.

WHAT IF?

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

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

Discussing these issues at the beginning of the relationship with your friend or colleague will help to avoid misunderstandings later when the Assisting Attorney or Authorized Signer interacts with the Planning Attorney's former clients. If these issues are not discussed, the Planning Attorney and the Assisting Attorney or Authorized Signer 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) that the Assisting Attorney may be required to report the Planning Attorney to the Grievance Committee.

The best way to avoid these problems is for the Planning Attorney and the Assisting Attorney or Authorized Signer to have a written agreement, and, when applicable, for the Assisting Attorney or Authorized Signer to have a written agreement 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 that 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 #9, are presented as if the Assisting Attorney is posing the questions.

1. 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 that 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 malpractice insurance carrier of the Planning Attorney, 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 review the obligation to inform the client and the Planning Attorney's malpractice insurance carrier of the error. If you are the attorney for the Planning Attorney, you would not be obligated to inform the Planning Attorney's client of the error. You would, however, want to be careful not to make any misrepresentations. [For

example, if the Planning Attorney had previously told the client a complaint had been filed, and the complaint had not been filed, you should not say or do anything that would lead the client to believe the complaint had been filed. In any case, you should notify the Planning Attorney's malpractice insurance carrier as soon as you become aware of any error or omission that may be a potential malpractice claim in order to prevent denial of coverage under the policy due to the "late notice" provision.

If you are the Planning Attorney's lawyer, an alternative arrangement that you can make with the Planning Attorney is to agree that you may 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. 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 any 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. Since the Planning Attorney is no longer practicing law, does the Planning Attorney have malpractice coverage?

This depends on the type of coverage the Planning Attorney had. Most malpractice policies include a short automatic extended reporting period of 60 or 90 days, which provides the opportunity to report known or potential malpractice claims when a policy ends and will not be renewed. In addition, most malpractice policies provide options to purchase an extended reporting period endorsement for longer periods of time. These extended reporting period endorsements do not provide ongoing coverage for new errors, but they do provide the opportunity to lock in coverage under the expiring policy for errors that surface after the end of the policy, but within the extended reporting endorsement timeframe. Consideration should be given to how funding the payment of such an endorsement will be achieved, as the premiums often are a multiple of the last year's premium.

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

You must check the definition of "Insured" in the malpractice policy. Most policies define "Insured" as both the firm and the individual lawyers employed by or affiliated with the firm. This typically is broadened to include past employees and "of counsel" attorneys. In addition, most lawyers' professional liability policies specifically provide coverage for the "estate, heirs, executors, trustees in bankruptcy and legal representatives" of the Insured, as additional insureds under the policy. Check with the Planning Attorney's insurance agent and make sure that any endorsement necessary to include you on the coverage is done in a timely fashion.

5. 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) if the clients want you to represent them and (2) whom else you represent.

If you are representing the Planning Attorney, you are unable to represent the Planning Attorney's former clients on any matter against the Planning Attorney. This would include representing the Planning Attorney's former client 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 undergoing 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. 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 didn't zealously advocate on behalf of your new client. To avoid this potential exposure, you might provide the client with names of other attorneys, or refer the client to a lawyer referral service.

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

If your review of the Planning Attorney's escrow account indicates that there may be conflicting claims to the funds in the account, you should initiate a procedure for distributing the existing funds, such as an interpleader. If proceedings have been instituted pursuant to Practice Book 2-56 et seq., you might file a motion with the court asking for advice. You may also get advice from the Office of the Chief Disciplinary Counsel which assists trustees and others in the management of attorneys' matters when they have died or become disabled.

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

The answer depends on the circumstances.

If you are the Planning Attorney's lawyer, you are not obligated to inform the Planning Attorney's former clients or the Grievance Committee of any ethics violations. (See Rule 8.3 (c).) 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 Planning Attorney's escrow 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 may have to disburse what you can, 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 not the attorney for the Planning Attorney, and you are not representing any of the former clients of the Planning Attorney, you may still have a fiduciary obligation (as an authorized signer on the escrow account) to notify the clients of the shortfall, and you may have an obligation under Rule 8.3 to report the Planning Attorney to the Grievance Committee. You should also report any notice of a potential claim to the Planning Attorney's malpractice insurance carrier in order to preserve coverage under the Planning Attorney's malpractice insurance policy.

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 such as pursuing the Planning Attorney for the shortfall, filing a claim with the Client Security Fund or the malpractice insurance carrier and filing an ethics complaint with the Grievance Committee.

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 the obligation to inform the Planning Attorney's former clients or the Grievance Committee of the Planning Attorney's ethical errors. If you do not want to inform your clients about possible ethics violations, you must explain to your clients (the former clients of Planning Attorney) that you are not providing the clients with any advice on ethics violations of the Planning Attorney. You should advise the client, 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 Rule 8.3.

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

8. 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 in some way you 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 defalcation depends on your relationship with the Planning Attorney and with the Planning Attorney's former clients.

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.

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

The most important reason for authorizing someone to sign on your trust account is the convenience it provides for your clients. If you suddenly become unavailable or unable to continue your practice, an Assisting Attorney or Authorized Signer is able to transfer money from your trust account to pay appropriate fees, disbursements and costs, to provide your clients with settlement checks, and to refund unearned fees. If these arrangements are not made, the clients' money must remain in the trust account, until a court allows access. This court order may be through a trustee proceeding, or an order for a court-directed interpleader. This delay may leave your clients at a disadvantage, since settlement funds, or unearned fees held in trust, may be needed by them to hire a new lawyer.

On the other hand, a serious risk of authorizing access is your inability to control the person who has been granted access. Since serving as an authorized signer gives the Assisting Attorney or Authorized Signer the ability to write trust account checks, withdraw funds, or close the account, he or she can do so at any time, even if you are not disabled, incapacitated, or for some other reason unable to conduct your business affairs, or dead. It is very important to carefully choose the person you authorize as a signer, and when possible, to continue monitoring your accounts.

If you decide to allow your Assisting Attorney or Authorized Signer to be an authorized signer, you must decide if you want to give that person (A) access only during a specific time period or when a specific event occurs (e.g., incapacity) or (B) access all of the time.

10. The Planning Attorney wants me to both be her Assisting Attorney and her Authorized Signer. Am I permitted to do both if I am the attorney for the Planning Attorney?

Not if there is a conflict of interest. As an Authorized Signer on the Planning Attorney's clients' funds account, you would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. This duty could conflict with your duty to the Planning Attorney if (A) you were hired to represent him or her on issues related to the closure of his or her law practice and (B) there were defalcations in the escrow account. Because of this potential conflict, it is probably best to choose to be an authorized signer or to represent the Planning Attorney on issues related to the closure of his or her practice, but not both.

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

1. Consider using retainer agreements with your clients that state that you have arranged for an Assisting Attorney to manage or close your practice in the event of your death, disability, impairment or incapacity, and identifying such attorney.
2. Have a thorough and up-to-date office procedure manual that includes information on:
 - a. How to check for conflicts of interest;
 - b. How to use the calendaring system;
 - c. How to generate 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 documents of clients;
 - 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. Business and personal insurance policies with contact information for brokers and insurance companies.
3. Make sure all of your file deadlines (including follow-up deadlines) are on your calendaring system.
4. Document your files.
5. Keep your time and billing records up-to-date.
6. Have a written agreement and/or power of attorney with an attorney who will manage or close your practice (the "Assisting Attorney") that outlines the responsibilities delegated to the Assisting Attorney who will be managing or closing your practice. Include a procedure to enable your Assisting Attorney to determine whether your incapacity renders you unable to practice law, and complete, in advance, a medical release and authorization form as required by HIPAA permitting disclosure of medical information to assist in this determination. Determine whether the Assisting Attorney also will be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict of interest issues.
7. If your written agreement authorizes the Assisting Attorney to sign trust or general account checks, follow the procedures required by your local bank. Alternatively, you may select a different person to handle the financial aspects of closing or transitioning our office, called an Authorized Signer. Decide whether you want to authorize access at all times, at specific

times, or only upon the happening of a specific event. In some instances, you and the Assisting Attorney will be required to sign bank forms authorizing the Assisting Attorney or Authorized Signer to have access to your trust or general account. Choose your Assisting Attorney or Authorized Signer wisely for he or she may have access to your clients' funds.

8. Familiarize your Assisting Attorney or Authorized Signer with your office systems and keep him or her apprised of office changes.
9. Introduce your Assisting Attorney or Authorized Signer to your office staff. Make certain your staff knows where you keep the written agreement with your Assisting Attorney and how to contact the Assisting Attorney if an emergency occurs before or after office hours. If you practice without a regular staff, make sure your Assisting Attorney knows whom to contact (the landlord, for example) to gain access to your office.
10. Inform your spouse or closest living relative and your named executor of the existence of this agreement and how to contact the Assisting Attorney or Authorized Signer.
11. Renew your written agreement with your Assisting Attorney or Authorized Signer each year. If you include the name of your Assisting Attorney in your retainer agreement, make sure the information concerning that attorney is current.

CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. Finalize as many active files as possible.
2. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their matters. The letter should explain how and where they can pick up copies of their files and should give a deadline for doing so.
3. For cases that have pending court dates, depositions or hearings, discuss with affected clients how to proceed. Where appropriate, request extensions, continuances and the rescheduling of hearing dates. Send written confirmations of these extensions, continuances and rescheduled dates to opposing counsel and to your client.
4. For cases before administrative bodies and courts, obtain clients' permission to submit motions and orders to withdraw as counsel of record.
5. In cases where the client is obtaining a new attorney, be certain that an appearance in lieu of yours is filed.
6. Select an appropriate date and check to see if all matters have a motion and order allowing your withdrawal as counsel of record or an appearance in lieu has been filed with the court.
7. Make copies of files for clients. Retain your original files (except, in the case of original documents such as deeds, retain a copy and provide the client with the original). All clients should either pick up copies of their files (and sign a receipt acknowledging that they have received them) or sign an authorization for you to release copies of their files to their new attorneys.
8. Write to all clients for whom you have retained original wills or other papers, advising them that you are closing your office and request that they pick up their original materials. Ask them to sign a receipt and maintain a record of all documents that are retrieved.
9. Tell all clients where their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy their files after seven years. If a closed file is to be stored by another attorney, obtain the client's permission to allow the attorney to store the file for you and provide the client with the attorney's name, address, and phone number.
10. If you have sold your practice, tell your clients the name, address, and phone number of the purchasing attorney.
11. If you are a sole practitioner, arrange to have your calls forwarded to you or another person who can assist your clients. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

If you are handling the closing or sale of another attorney's practice, the following checklist will be of assistance to you and your staff. The reason that the attorney is closing his or her practice will also affect how you make these decisions. For example, if the attorney is disabled or dead, you may need to make decisions without the attorney's assistance. To the extent that the terminating attorney or his or her staff is available, you should make every effort to use that assistance.

You should review Practice Book 2-64 and consider whether you should seek to be appointed as Trustee for the attorney. This will give you the assistance of the Disciplinary Counsel's office and will allow you to submit expenses to the Judicial Branch for reimbursement. Disciplinary Counsel also has a handbook for court-appointed trustees which will assist you in your duties.

Costs involved in taking over the responsibility for another attorney's practice can be substantial. Be prepared and be careful about who is responsible for these expenses.

The term "Affected Attorney" refers to the attorney whose office is being closed or sold. "Assisting Attorney" refers to the attorney who is handling the closing or sale of another attorney's practice. "Acquiring Attorney" refers to one who is purchasing 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, etc.

If possible, discuss with the Affected Attorney the status of open files – what has been completed, what has not, what has been billed, etc.

If a sale of the practice is being contemplated or pursued, whether by the Affected Attorney or the estate, review and understand Rule 1.17 which deals with the sale of a law practice. .

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

Consider consulting other lawyers if you do not have the expertise in one or more of the areas in which the Affected Attorney practiced.

Consider the overhead costs involved in purchasing a practice or closing a practice.

3. Contact courts and opposing counsel about files that require immediate discovery or court appearances. Reschedule hearings or obtain extensions where necessary. Confirm extensions and reschedulings in writing.
4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
5. Look for an office procedures manual. Determine if there is a way to get a list of clients with active files.

6. In cases where the client is obtaining a new attorney, be certain that an appearance in lieu is filed.
7. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Affected Attorney as attorney of record.
8. Send clients who have active files a letter explaining that the law office is being closed, instructing them to retain a new attorney and/or to pick up the open file.
9. Provide clients with a date by which they should pick up copies of their files.
10. Inform clients that new counsel should be chosen immediately.
11. If you, as Assisting Attorney, will represent the Affected Attorney's clients, or if you are buying the practice, consider whether the fee policy will be the same as the Affected Attorney's policy. For example, if hourly rates are used, and if so, are they similar? Are set fees used, and are they similar? Have retainers historically been used, and are the policies and retainer requirements of the purchasing attorney the same? A new fee letter should be sent in all matters. If the matter is a contingency fee case, the fee letter must comply with Rule 1.5 and the statute.

In open estate files, are your practices consistent with the Affected Attorney's practices with respect to what is covered on a quoted fee? For example, is a fee for probate limited to just the probate of the will or does it cover estate tax return preparation, will contests, etc. Carefully review retainer letters and send modifications if necessary. An attorney may have varied from normal and usual fee arrangements. Make sure you know what you are agreeing to before stating that you are honoring "all" the arrangements with all the clients.

If the Affected Attorney is available and willing, he or she should introduce you to non-lawyer staff members, and referral sources such as insurance agents, bankers, realtors, and accountants with whom the Affected Attorney worked. If the Affected Attorney is not available or willing to assist in this capacity, you should make these contacts immediately, not only for purposes of preserving client relations, but also to determine the location of clients, history of clients, etc. Many clients work with a team of advisors and, with the client's consent, you should have discussions with each of these other professionals. Clients may be looking to these other advisors for recommendations for new counsel.

9. Make sure that all court cases have either a motion and order allowing withdrawal of the Affected Attorney or an appearance in lieu filed with the court.
10. Make copies of files for clients. Retain the Affected Attorney's original file. All clients should either pick up a copy of their file (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and there are original documents in it that the client needs (such as a title abstract to property), return the original documents to the client and keep copies for the Affected Attorney's file. Determine who or what entity is responsible for storing the Affected Attorney's files and records. Return original wills and other documents or property to clients.

Make contact with firms or practices with which the Affected Attorney was associated to determine what, if any, files remain with those practices. This will save the acquiring attorney a significant amount of time "searching" for files demanded by clients for past

representation by the Affected Attorney. Also, determine who will bear the cost and the responsibility for acquiring or copying those files: Is it the Assisting Attorney, the Affected Attorney or the court or other agency that has taken over the primary responsibility for the Affected Attorney's practice?

Consider file storage: The older the practice, the more time and expense will be involved in file review and management.

Determine whether "closed" files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased, and that the file is closed. Others may never take this step and always assume that the client may be coming back for further representation.

When returning files, make sure that you are returning files to the proper "client." If a husband and wife have a will file from years ago, and the wife responds to your client inquiry letter by asking for the file, do you send back both wills? We advise not. What if there has been a divorce, or there is presently a dispute between the husband and wife? The same rule applies with corporations, shareholders, partners, etc. Obtain consent from all that are involved. Look for court or disciplinary committee guidance where appropriate.

Review the content of files before returning them to clients who have requested them; decide whether you need to retain a copy of all or some portion of the file, in relation to any potential liability you might face for having been responsible at some point for the file. Consider retaining documents for the benefit of the Affected Attorney so that her or his estate could defend any claims against them? Proceed with caution.

11. Advise all clients where their closed files will be stored, and who they should contact in order to retrieve a closed file. Again, carefully address the issue of file storage costs with all parties.
12. To locate clients for whom there is no current address, contact the postal service, referral sources of the Affected Attorney, and clients in the same geographic area. Consider publication to advertise that the firm has closed – be careful about any specific comments concerning Affected Attorney's actions that led to closing of the office.
13. If the attorney whose practice is being closed was a sole practitioner, try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Affected Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
14. Make arrangements through the executor or through the Affected Attorney to obtain reporting endorsement coverage on professional liability insurance for continuing malpractice insurance.
15. Obtain written instructions from clients concerning any funds in their trust accounts. Contact other signatories on the IOLTA account. Comply with Rule 1.15 in all respects.
16. Determine responsibility for the IOLA and other attorney escrow accounts immediately. Your rights and obligations as the Acquiring Attorney must be known — potential liability is significant.
17. Prepare a final billing statement showing any outstanding fees due, and/or any money in trust. Remit money received from clients for services rendered by the Affected Attorney to

the Affected Attorney or his/her estate. Remember, in many cases, the client has an entirely different understanding of what the billing arrangement is than the Affected Attorney. Be prepared for the time and expense of discussing and negotiating fee arrangements with clients. Immediately notify, and schedule a meeting with the Affected Attorney's accountant to obtain a full understanding of the financial reporting policy of the Affected Attorney. If the Affected Attorney did his or her own accounting and tax preparation, the Assisting Attorney's accountant should be given immediate access to books and records to determine tax and financial liabilities of the Affected Attorney.

18. If authorized, pay business expenses and liquidate or sell the practice. If the Affected Attorney is deceased, work with his/her executor in taking care of these matters.
19. Review and analyze technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Affected Attorney or his/her staff should participate in transferring over not only current technology in use but also provide access to systems that have historically been used by the attorney but which are not current. A significant amount of client information exists in the old files and systems. Obtain passwords. Review "vendor" relationships with the Affected Attorney's vendors. Were prepayments made for services, products that are not going to be used? Are there outstanding bills for storage of files, stationery, supplies, etc. that must be paid, and if so, who is responsible?
20. Review business insurance policies. When are renewal policies due? Which policies can be renewed and which can be cancelled, and by what date? Some policies may be cancelled mid-term and a pro-rata premium refund may be available, depending on the type of coverage. Also, if a Business Overhead Expense (BOE) policy is in place, and if the Affected Attorney suffered a period of covered disability prior to the office closing, benefits may be available for some office expense.

AGREEMENT TO CLOSE LAW PRACTICE IN THE FUTURE

This Agreement is entered into this ____ day of _____, 200__, by and between _____ (“Planning Attorney”), an attorney licensed in the State of Connecticut and whose office for the practice of law is located at _____ and _____ (“Assisting Attorney”), an individual admitted and licensed to practice as an attorney in Connecticut and whose office for the practice of law is located at _____.

RECITALS

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

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

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

WHEREAS, Planning Attorney has requested Assisting Attorney to act as his agent to take all necessary actions to close Planning Attorney’s practice and Assisting Attorney has consented to this appointment; and

WHEREAS, Planning Attorney and Assisting Attorney are entering into this Agreement to define their rights and obligations in connection with the Assisting of Planning Attorney’s practice.

1. **Effective Date.** This Agreement shall become effective only upon Planning Attorney’s death, disability, incapacity or other inability to act, as established by paragraph 2. The appointment and authority of Assisting Attorney shall remain in full force and effect as long as it is necessary or convenient to carry out the terms of this Agreement, or unless sooner terminated under paragraphs 8 or 9.
2. **Determination of Death, Disability, Incapacity.** Assisting Attorney shall make the determination that Planning Attorney is dead, disabled, incapacitated or otherwise unable to practice law, and if disabled or incapacitated, that such disability or incapacity is permanent in nature or likely to continue indefinitely. Assisting Attorney shall base his determination on reliable evidence such as communications with the members of Planning Attorney’s family and written opinions of licensed physicians and other medical professionals who diagnosed or treated Planning Attorney. As part of the process of determining whether the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law, all individually identifiable health information and medical records may be released to Assisting Attorney, even though the authority of the Assisting Attorney has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and

Accountability Act of 1996 ("HIPAA") 42 U.S.C. 1320d and 45 C.F.R. 160-164.¹ Assisting Attorney may also consider the opinions of colleagues, employees, friends or other individuals with whom Planning Attorney maintained a continuous and close relationship. Assisting Attorney shall sign an affidavit stating the facts upon which his determination is based, and such affidavit shall, for the purposes of this agreement, be conclusive proof that the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law.

[or consider having the family or physicians determine incapacity, and including a measurable standard such as a determination by two physicians that Planning Attorney is incapable of conducting law practice by reason of incapacity]

3. General Power and Appointment of Assisting Attorney as Attorney-In-Fact.

Upon the determination that Planning Attorney is unable to continue the practice of law by reason of death, disability, incapacity or other inability to act as provided herein, and is unable to close his own practice, Planning Attorney consents to and authorizes the losing Attorney to take all necessary actions to close Planning Attorney's law practice. Planning Attorney appoints Assisting Attorney as his attorney-in-fact with full power to do and accomplish all of the actions expressed and implied by this Agreement as fully and completely as Planning Attorney would do personally but for his inability.

4. Specific Powers. Planning Attorney consents to and authorizes the following actions by Assisting Attorney in addition to any other actions Assisting Attorney in his sole discretion deems necessary to carry out the terms of this Agreement.

- a. Access to Planning Attorney's Office.** To enter Planning Attorney's office and use his equipment and supplies as needed to close Planning Attorney's practice.
- b. Designation as Signatory on Financial Accounts.** To replace Planning Attorney as signatory on all of Planning Attorney's law office accounts with any bank or financial institution, including without limitation, attorney trust, escrow or special accounts, checking accounts, and savings accounts. Planning Attorney's bank or financial institution may rely on this authorization unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.
- c. Opening of Mail.** To receive, sign for and open Planning Attorney's law practice mail and deliveries by courier and to process and respond to them, as necessary.
- g. Possession of Property.** To take possession, custody and control over all of Planning Attorney's property relating to his law practice, real and personal, including client files and records.
- h. Access to and Inventory/Examination of Files.** To enter any storage location where Planning Attorney maintained his files and to inventory and examine all client case files, including client wills, property and other records of Planning Attorney. If Assisting Attorney identifies a conflict of

¹ To assist in this process, HIPAA compliant medical releases have been executed at the same time this document is signed.

interest with a specific file or client, he shall assign the file to the Successor Assisting Attorney in accordance with paragraph 8(b).

- i. **Notification to Clients.** To notify clients, potential clients and those who appear to be clients, of Planning Attorney's death, disability, incapacity or other inability to act, and to take whatever action Assisting Attorney deems appropriate to protect the interests of the clients, including advising the clients to obtain substitute counsel.
- j. **Transfer of Files.** To safeguard files and arrange for their return to clients; to obtain consent from clients to transfer files to new attorneys, to transfer files and property to clients or their new attorneys; to obtain receipts therefor.
- k. **Storage of Files and Attorney's Records.** To arrange for storage of closed files, unclaimed files, and records that must be preserved for seven years under Rule 1.15.
- l. **Transfer of Original Documents.** To arrange for and transfer to clients all original documents, including wills, trusts and deeds.
- m. **Extensions of Time.** To obtain client's consent for extensions of time, to contact opposing counsel and courts/administrative agencies to obtain extensions of time, and to apply for extensions of time if necessary pending employment of new counsel by clients.
- n. **Litigation.** To file motions, pleadings, appear before court, and take any other necessary steps where the clients' interests must be immediately protected pending retention of other counsel.
- o. **Notification to Court and Others.** To contact all appropriate agencies, courts, adversaries and other attorneys, professional membership organizations such as state or local bar associations, Bar Counsel, Disciplinary Counsel, the Statewide Grievance Committee, the Office of the Chief Court Administrator, and any other individual or organization that may be affected and advise them of Planning Attorney's death or other inability to act and that Planning Attorney has given this authorization to Assisting Attorney.
- p. **Collection of Fees and Return of Client Funds.** To send out invoices for unbilled work by Planning Attorney and outstanding invoices; to prepare an accounting for clients on retainer, including return of client funds; to collect fees and accounts receivables on behalf of Planning Attorney or Planning Attorney's estate; to prepare an accounting of each client's escrow fund and arrange for transfer of escrow funds, including obtaining consent from client to transfer escrow funds and acknowledgment of receipt of escrow funds by new counsel or client.
- q. **Payment of Business Expenses and Creditors.** To pay business expenses such as office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel, to determine the nature and amount of all claims of creditors, including clients, of Planning Attorney and to pay or settle same.
- r. **Personnel.** To continue the employment of Planning Attorney's employees and other personnel to the extent necessary to assist the Assisting Attorney in the performance of his duties, to compensate and to terminate such employees or other personnel; to employ or dismiss agents, accountants, attorneys or others and to compensate them.
- s. **Termination of Obligations.** To terminate or cancel business

obligations of Planning Attorney, including office lease; lease of equipment such as copier, computer, furniture; library, magazine or newspaper subscriptions.

- t. **Insurance.** To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability, or other office insurance of Planning Attorney; to notify any professional liability insurance carriers of Planning Attorney's death, disability, incapacity or other inability to act; to cooperate with such insurance carriers regarding matters related to Planning Attorney's coverage, including addition of Assisting Attorney as an insured under said policy.
- t. **Taxes.** To prepare, execute or file income, information or other tax returns or forms and to act on behalf of Planning Attorney's law practice in dealing with the Internal Revenue Service, any division of the Connecticut State Department of Taxation and Finance, or any office of any other tax department or agency.
- u. **Settlement of Claims.** To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, or disputes between Planning Attorney's law practice and any other person or entity; to commence or defend all actions affecting Planning Attorney's law practice.
- v. **Execution of Instruments.** To execute, as Planning Attorney's attorney-in-fact, any deed, contract, affidavit or other instrument on behalf of Planning Attorney.
- w. **Attorney as Fiduciary.** To resign any position which Planning Attorney holds as a fiduciary, such as executor or trustee, and to notify other named fiduciary, if any, and beneficiaries of the estate or trust; if the trust or will does not name a successor fiduciary, to apply to the court for appointment of a successor fiduciary; to confer with the personal representative of the Planning Attorney's estate with respect to the obligation of such personal representative to account for the assets of the estate or trust that Planning Attorney was administering.
- x. **Power of Sale and Disposition.** To sell or otherwise arrange for disposition of Planning Attorney's furniture, books, or other personal property located in Planning Attorney's law office.
- y. **Representation of Planning Attorney's Clients.** To provide legal services to Planning Attorney's clients, provided that Assisting Attorney has no conflict of interest, obtains the consent of Planning Attorney's clients, and does not engage in conduct that violates Disciplinary Rule 2-103 of the Code of Professional Responsibility. If Planning Attorney's clients engage Assisting Attorney to perform legal services, Assisting Attorney shall have the right to payment for such services from such clients.
- z. **Access to Safe Deposit Box.** To open Planning Attorney's safe deposit box used for law practice, to inventory same, and to arrange for return of property to clients.

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

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

[note: in case of death, Planning Attorney should provide in Will that sale of practice is to be handled by Assisting Attorney; alternative would be to specifically authorize Executor to sell the practice in which case this power to Assisting Attorney should be deleted from above provision in the event of sale by reason of death.]

Assisting Attorney shall have the right to purchase, in whole or in part, Planning Attorney's practice, provided that the purchase price is the fair market value as determined by an appraiser and that the terms of the sale are approved by the Executor or Administrator of Planning Attorney's estate or an independent third party (But note potential issues—see DR 5-101 and 5-104).

[note: consider giving Assisting Attorney first option to purchase. Also, terms and conditions of sale to Assisting Attorney may be described in this Agreement or by separate agreement]

7. **Compensation.** Assisting Attorney shall be paid reasonable compensation for the services performed in Assisting the law practice of Planning Attorney. Such compensation shall be based on time and Assisting Attorney agrees to maintain accurate and complete time records for the purposes of determining his compensation. Assisting Attorney's compensation shall be paid from Planning Attorney's law practice (or from the estate of the deceased Planning Attorney, in which case provision should be made in Planning Attorney's Will for such payment).
8. **Resignation of Assisting Attorney and Appointment of Successor Assisting Attorney.**

A. Prior to the effective date of this Agreement, Assisting Attorney may resign at any time by giving written notice to Planning Attorney. After the effective date of this Agreement, Assisting Attorney may resign by giving written notice to Planning Attorney, or if Planning Attorney is deceased, to Planning Attorney's Executor or Administrator, subject to any ethical or professional obligation to continue or complete any matter undertaken by Assisting Attorney.

B. If Assisting Attorney resigns or otherwise is unable to serve, Planning Attorney appoints _____ as Successor Assisting Attorney, and Successor Assisting Attorney consents to this appointment as evidenced by his signature to this Agreement. Successor Assisting Attorney shall have all the rights

and powers, and be subject to all the duties and obligations of Assisting Attorney. During the tenure of Assisting Attorney, Successor Assisting Attorney shall review and take any necessary action with respect to those client files of Planning Attorney in which Assisting Attorney identifies a conflict of interest.

C. Assisting Attorney shall not be required to post any bond or other security to act in their capacity.

9. Liability and Indemnification of Assisting Attorney. Assisting Attorney shall not be liable to Planning Attorney or Planning Attorney's estate for any act or failure to act in the performance of his duties hereunder, except for willful misconduct or gross negligence. Planning Attorney agrees to indemnify and hold harmless Assisting Party from any claims, loss or damage arising out of any act or omission by Assisting Attorney under this Agreement, except for liability or expense arising from Assisting Attorney's willful misconduct. This indemnification does not extend to any acts, errors or omissions of Assisting Attorney while rendering or failing to render professional services as attorney for former clients of Planning Attorney.

10. Revocation, Amendment and Termination.

- a. Prior to the effective date of this Agreement, Planning Attorney may at any time remove the Assisting Attorney, or revoke, amend or alter this Agreement by written instrument delivered to Assisting Attorney and Successor Assisting Attorney, provided that any amendment or modification to Assisting Attorney's obligations hereunder and to his rate of compensation shall require Assisting Attorney's written consent.
- b. This Agreement shall terminate upon (i) prior to the effective date of this Agreement, delivery of written notice of termination by Planning Attorney to Assisting Attorney and Successor Assisting Attorney; and (ii) after the effective date of this Agreement, delivery of a written notice of termination to Assisting Attorney by the Executor or Administrator of Planning Attorney's estate upon a showing of good cause, by a conservator of the property of Planning Attorney appointed by a court of competent jurisdiction or of a trustee appointed pursuant to Practice Book 2-64.

11. Miscellaneous.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day

and year first above written.

_____ Planning Attorney

_____ Assisting Attorney

_____ Successor Assisting Attorney

**AUTHORIZATION AND CONSENT TO CLOSE OFFICE
(Short Form)**

This Authorization and Consent is entered into between _____, and
_____.

I, _____, a sole practitioner who engages in the practice of law at offices located at _____ (“Planning Attorney”) authorizes _____ who engages in the practice of law and has an office located at _____ (“Assisting Attorney”) 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 utilizing 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 files and records of my law practice and obtaining information about any pending matters that may require attention, except for those files in which Closing Attorney has a conflict of interest;
- Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;
- 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 where their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons, entities and professional organizations that may be affected and informing them that I have given this authorization;
- Signing checks on my trust account and providing an accounting to my clients of funds in trust; and
- Contacting my professional liability carrier concerning claims and potential claims.

My bank or financial institution may rely on the authorizations in this Agreement unless such bank or financial institution has actual knowledge that this Agreement has been

terminated or is no longer in effect.

For the purpose of this consent, 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, other representatives or a written opinion of one or more duly licensed physicians. 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 Authorization and Consent.

The Assisting Attorney agrees 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. The Assisting Attorney is appointed as my agent for purposes of preserving my clients' confidences and secrets, the attorney-client privilege, and the work product privilege. This authorization does not waive any attorney-client privilege.

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

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

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

The Assisting Attorney shall be paid reasonable compensation for services rendered in closing my law office.

The Assisting Attorney may revoke this acceptance at any time prior to my death or disability, and after such time, Assisting Attorney has the power to appoint a new Assisting Attorney to serve in the Assisting Attorney's place. If the Assisting Attorney revokes this acceptance, the Assisting Attorney must promptly notify me in writing.

Prior to my death or disability, I may revoke this Authorization and Consent by written notification to Assisting Attorney.

Date

Planning Attorney

Date

Assisting Attorney

**LETTER FROM CLOSING OR CARETAKER ATTORNEY ADVISING
THAT LAWYER IS UNABLE TO CONTINUE IN PRACTICE**

Re: [Name of Case]

Dear [Name]:

Due to _____ (reason for ill health),
[Affected Attorney] is no longer able to continue in the practice of law. You will need, therefore, to retain the services of another attorney to represent you in your legal matter(s), and I recommend you do so immediately so that your legal interests may be protected. I will assist [Affected Attorney] in closing [his/her] practice.

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

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

[Name] [Address] [Phone]

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

[Name] [Address] [Phone]

You will shortly receive a final accounting from [Affected Attorney], which will include any outstanding balance(s) you owe [him/her], and an accounting of any funds in your client trust account.

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

Thank you.

Sincerely,

**LETTER FROM PLANNING ATTORNEY ADVISING THAT LAWYER IS
CLOSING HIS/HER OFFICE**

Re: [Name of Case] Dear

[Name]:

Please be advised that as of *[date]*, I will be closing my law practice due to *[provide reason, if possible]*. I will be unable, therefore, to continue to represent you in your legal matter(s). I recommend that you immediately retain new counsel to handle your matter(s). You may 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 to the extent that I can.

When you select your new attorney, please provide me with written authority to transfer your file(s) to [him/her]. If you prefer, you may come to our office and pick up [a copy/copies] of your file(s), and deliver [it/them] to your new attorney. In either case, it is imperative that you obtain a new attorney as soon as possible, and in no case later than *[date]*, so that your legal rights may be preserved. *[Insert appropriate language regarding time limitations or other critical time lines of which the client should be aware.]*

I *[or: insert name of the attorney who will store files]* will continue to store my copy of your closed file(s) for seven years. After that time, I *[or, insert name of other attorney if relevant]* may destroy my [copy/copies] unless you notify me forthwith in writing 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/copies] of your closed file(s), please let me know immediately and I will make alternative arrangements.]*

If you or your new attorney need [a copy/copies] of your closed file(s), please feel free to contact me.

Within the next *[fill in number]* weeks I will provide you with a full accounting of your funds in my trust account, if any, and of 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 may reach me at the

following phone number and address:

[Name]

[Address]

[Phone]

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

Thank you.

LETTER FROM FIRM OFFERING TO CONTINUE REPRESENTATION

Re: [Name of Case]

Dear [Name]:

Due to _____ (reason for ill health)

[*Affected Attorney*] is no longer able to continue representing you in your legal matter(s). A member of this firm, [name], is available to continue handling your matter(s) if you wish. You have the right, however, to select any attorney of your choice to represent you.

If you wish our firm to continue handling your matter(s), please sign the authorization at the end of this letter and return it to us.

If you wish to retain another attorney, however, please provide us with written authority to release your file(s) directly to [him/her]. If you prefer, you may come to our office and pick up [a copy/copies] of your file(s) and deliver [it/them] to your new attorney. We have enclosed these authorizations for your convenience.

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

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

Thank you.

Enclosures

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

[Client]

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

I, (name of principal), residing at _____, an attorney licensed and in good standing to practice law in the State of Connecticut, with offices located at _____, do hereby appoint _____ (name of Agent), residing at _____, an attorney licensed and in good standing to practice law in the State of Connecticut, with offices located at _____, as my agent and attorney-in-fact to act for me, in my name and in my behalf as hereinafter provided. This limited power of attorney shall become and remain effective, however, only upon and during a period of my incapacity by reason of my disappearance, disability, or other inability to act which renders me incapable of conducting my law practice in a competent manner. Such determination of incapacity shall be made by me or written certification by:

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

OR

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

OR

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

As part of the process of determining whether I lack decision-making capacity, all individually identifiable health information and medical records may be released to my Agent even though such representative's appointment has not yet become effective [*or, if the principal/ attorney has selected a person other than the Agent to make the determination of incapacity, insert such other person's name*]. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d and 45 C.F.R. § 160-164.

I hereby appoint my Agent, for the sole and limited purpose and in my name and stead, of conducting all matters and managing all property, whether real or personal, that are related to or associated with my law practice in any way wherein I myself might act if I personally were present and to the extent that I am permitted by law to act through such an agent. These powers shall include, but shall not be limited to, the following:

a. Access to my Office. To enter my office, take possession, custody and control of all my office property, real and personal, including client files, office equipment, supplies, and records and to use such property to manage and/or close my law practice;

b. Designation as Signatory on Financial Accounts. To replace me as signatory on all my law office accounts with any bank or financial institution, including without limitation attorney trust, escrow or special accounts and checking or savings accounts, and my banks or financial institutions may rely upon this authorization unless they have or acquire actual knowledge that this instrument has been revoked or is no longer in effect;

c. Opening of Mail. To receive, sign for and open my law practice mail and deliveries whether by courier or otherwise, and to process and respond to them as appropriate;

d. Access To and Inventory/Examination of Files. To enter any storage location where I maintain my files (whether in my office or off site); to inventory and examine all my client case files, property and records and, should (s)he identify a conflict of interest with a specific file or client, to assign such file upon client consent to my successor Agent named herein or to such other attorney as my Agent may deem appropriate;

e. Notification to Clients. To notify my clients, potential clients and those who appear to be my clients, of my disability, incapacity or other inability to act, and to take whatever action (s)he may deem appropriate to protect the interests of such persons and entities, including advising them to obtain substitute counsel;

f. Transfer of Files. To safeguard and return my clients' files upon request or as otherwise may be appropriate, or in the alternative to obtain consent from them to transfer their files to new counsel, all upon the acquisition of receipts therefore;

g. Storage of Files and Attorney's records. To arrange for the storage of such of my closed and unclaimed files and records as must be preserved for seven years pursuant to the provisions of Disciplinary Rule 9-102(d) of The Lawyer's Code of Professional Responsibility;

h. Transfer of Property and Original Documents. To transfer to my clients where appropriate, or to their designees, all their property and original documents, including wills, trusts and deeds;

i. Access to Safe Deposit Box. To open my safe deposit box used for my law practice and located at, to inventory same, and to arrange for return of property to clients.

k. Notification to Courts and Others. To advise all appropriate

courts, agencies, opposing and other counsel, professional membership organizations such as the Connecticut State Bar Association or local bar associations, the Office of Court Administration, and other appropriate individuals or entities, of my inability to act and of my Agent's authority to act in my behalf;

l. Extensions of Time. To obtain consent from my clients for extensions of time, to contact opposing counsel and courts/administrative agencies to obtain extensions of time, and to apply for such extensions if necessary pending my clients' retention of new counsel;

m. Litigation. To file pleadings, motions and other documents, to appear before courts, administrative offices and agencies, and to take any and all other steps necessary to protect my clients' interests until their retention of other counsel;

n. Collection of Fees and Return of Client Funds. To dispatch invoices for my unbilled work; to collect fees and accounts receivable on my behalf; to prepare accountings for clients on retainer; to return client funds where appropriate; to prepare an accounting of each of my client's escrow funds and arrange for transfer of escrow funds, including the obtaining of consent from my clients to the transfer of such funds to new counsel or to my clients as appropriate;

o. Payment of Business Expenses and Creditors. To pay my business expenses, including office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel; to determine the nature and amount of all claims of creditors, including my clients; and to pay or settle all such claims or accounts;

p. Personnel. To continue to employ such of my office staff as may be necessary to assist my Agent in the performance of his duties and to compensate them therefore; to terminate such employees or other personnel; and to employ such assistants, agents, accountants, attorneys or others as may be appropriate;

q. Termination of Obligations. To terminate or cancel my business obligations, including office and equipment leases, subscriptions and otherwise;

r. Insurance. To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability insurance, or my other office insurance; to notify as appropriate all professional liability insurance carriers of my disability, incapacity or other inability to act; and to cooperate with such insurance carriers regarding matters related to my coverage, including the addition of my Agent as an insured under any such policies;

s. Taxes. To prepare, execute and file income, information or other tax returns, reports or other forms and to act on my behalf in dealing with the Internal Revenue Service, the Connecticut State Department of Taxation and

Finance, or any other federal, state and local tax departments, agencies or authorities;

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

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

v. Power of Sale and Disposition. To sell or otherwise arrange for the sale or other disposition of my office furniture, books or other office property.

w. Representation of my Clients. To provide legal services to my clients, provided that my agent has no conflict of interest, obtains the consent of my clients, and does not engage in conduct that violates Disciplinary Rule 2-103 of The Lawyer's Code of Professional Responsibility. If my clients engage my Agent to perform legal services, my Agent shall have the right to payment for such services from such clients.

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

To induce third parties to act hereunder, I hereby agree that any such third party receiving a duly executed original copy of this instrument, or a copy certified in such manner as to make it viable and effective as provided by law, may act hereunder, and that the revocation or termination of this instrument shall be ineffective as to any such third party unless and until such third party's knowledge or receipt of notice of such revocation or termination, and I, for myself, my heirs, executors, administrators, legal representatives, successors and assigns hereby agree to indemnify and hold harmless any such third party against any claim(s) that may arise against such third party by reason of his or her having so relied upon the provisions of this instrument.

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

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

(Name of Principal)

STATE OF CONNECTICUT)
)ss.:
COUNTY OF)

On this_____ day of _____, 201_____, before me, the undersigned, a notary public in and for said state, personally ppeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public/Commissioner of Superior Court

GENERAL MEDICAL RECORDS RELEASE AND AUTHORIZATION FOR USE OR
DISCLOSURE OF PROTECTED HEALTH INFORMATION

PATIENT NAME: _____

ADDRESS: _____

SOCIAL SECURITY NUMBER: _____

I AUTHORIZE THE CUSTODIAN OF THE RECORDS TO DISCLOSE/RELEASE THE
FOLLOWING INFORMATION _____ [ALL MEDICAL
RECORDS, INCLUDING MENTAL HEALTH, SUBSTANCE ABUSE AND HIV/AIDS
RECORDS] OR [A SUBSET OF RECORDS]. THESE RECORDS ARE FOR
SERVICES RENDERED [IN THE LAST TWO YEARS] OR

_____.

PLEASE SEND THE RECORDS LISTED ABOVE TO [AGENT]

NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

THE INFORMATION MAY BE USED/DISCLOSED TO ASSIST IN THE
DETERMINATION OF MY MENTAL OR PHYSICAL CAPACITY TO PRACTICE LAW.

THE AUTHORIZATION EXPIRES ONE (1) YEAR FROM THE DATE IT IS
PRESENTED TO THE CUSTODIAN OF RECORDS.

I UNDERSTAND THAT AFTER THE CUSTODIAN OF RECORDS DISCLOSES
MY HEALTH INFORMATION, IT MAY NO LONGER BE PROTECTED BY
FEDERAL PRIVACY LAWS. BY SIGNING BELOW I REPRESENT AND
WARRANT THAT I HAVE AUTHORITY TO SIGN THIS DOCUMENT AND
AUTHORIZE THE USE OR DISCLOSURE OF PROTECTED HEALTH
INFORMATION AND THAT THERE ARE NO CLAIMS OR ORDERS PENDING
OR IN EFFECT THAT WOULD PROHIBIT, LIMIT OR OTHERWISE RESTRICT
MY ABILITY TO AUTHORIZE THE USE OR DISCLOSURE OF THIS
PROTECTED HEALTH INFORMATION.

SIGNATURE OF PATIENT

DATE

**WAIVER OF NOTICE OF SPECIAL JOINT MEETING OF
THE SOLE SHAREHOLDER AND SOLE DIRECTOR OF
[NAME OF CORPORATION]**

The undersigned, being the sole Shareholder and sole member of the Board of Directors of [NAME OF CORPORATION], a Connecticut professional corporation, does hereby waive notice of the time, place and purpose of the special joint meeting of the sole Shareholder and sole member of the Board of Directors of said corporation, and does hereby consent that the same be held at the office of the Corporation, [CITY], Connecticut , on [DATE OF MEETING], at [TIME], for the following purposes:

1. To appoint an agent to act on behalf of the Corporation in the event of the death, disability or incapacity of the sole Shareholder of the Corporation; and
2. For the transaction of such other business as may properly come before the meeting.

SHAREHOLDER:

DIRECTOR:

**MINUTES OF THE SPECIAL JOINT MEETING OF
THE SOLE SHAREHOLDER AND SOLE DIRECTOR OF
[NAME OF CORPORATION]**

MINUTES OF THE SPECIAL JOINT MEETING OF THE SOLE SHAREHOLDER AND SOLE DIRECTOR of [NAME OF CORPORATION], a Connecticut professional corporation, held at [CITY], Connecticut, on [DATE OF MEETING], at [TIME].

The following was present, being the sole Shareholder and sole member of the Board of Directors of the Corporation:

The meeting was called to order and _____
acted as Chair and as Secretary of the meeting.

The Chair then stated that a quorum was present and the meeting was ready to transact business.

The Secretary presented to the meeting a written Waiver of Notice signed by the sole Shareholder and sole Director of this Corporation. The Chair directed that such Waiver be affixed to the minutes of this meeting.

The Chair stated that in the event the sole shareholder of the Corporation is no longer able to practice law, whether on a permanent or a temporary basis, it is important to have a designee who could act in the capacity of the sole Shareholder. He noted as a corporation, the sole Shareholder and Director could appoint a licensed attorney who would act in the position of President of this Corporation until such time as the practice of the Corporation is sold or in the case of temporary incapacity, the sole Shareholder is able to return to practice. He recommended that _____ be appointed to this position in such an event.

The Chairman further stated that this individual would be appointed to act on behalf of the Corporation and to perform any and all duties, take any and all actions and to execute any and all documents necessary in the event the sole Shareholder of the Corporation can no longer perform the day-to-day operations of the Corporation due to death, disability or incapacity. After thorough discussion, upon motion duly made, seconded and unanimously adopted, it was

RESOLVED,

That _____ is hereby appointed as an agent of _____ the Corporation to act on behalf of the Corporation and to perform any and all duties, to take any and all actions and to execute any and all documents and agreements necessary which are associated with the maintenance of the Corporation's practice of law or the sale, winding-up, liquidation and/or dissolution of the Corporation in the event

of the death, disability or incapacity of the sole Shareholder of the Corporation, and it was

FURTHER RESOLVED, that this Corporation be authorized and directed to enter into any Agreements and the officers of this Corporation are directed and authorized to execute and deliver any documentation that may be necessary to effectuate the foregoing resolution, and it was

FURTHER RESOLVED, that the Secretary of this Corporation be directed to append to the minutes of this meeting and to include in the records of the Corporation any and all agreements and documentation to which the Corporation is a party that evidence the appointment of in the capacity set forth in the foregoing resolutions.

There being no further business to come before the meeting, it was, upon motion duly made, seconded and unanimously adopted, adjourned.

Secretary

CHECKLIST FOR THE EXECUTOR OF A SOLO PRACTITIONER

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

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

A solo practitioner's practice is unique in that it cannot continue to operate during the administration of an estate without a licensed and qualified attorney in place to take care of client matters. **Therefore, the very first thing that should be done is to retain legal counsel immediately. You must under no circumstances review the files yourself since to do so might violate attorney-client confidentiality.**

If a solo practitioner has died, his or her clients for whom services were being performed at the time of death must be advised immediately. In addition, steps must be taken to insure that those clients are properly advised as to the status of their matter and how they may retain substitute counsel. This must be done in a manner that will preserve the attorney client confidentiality that existed between the attorney and the client. This checklist is intended to address those matters that are unique to being the executor of an attorney's estate. It is not, however, an exhaustive list of all matters that are to be handled by an executor of an estate. The estate's legal counsel should be consulted to insure that your duties are properly carried out during the administration of the estate.

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

1. Retain legal counsel immediately. Legal counsel should be retained immediately to review the open matters that were being handled by the deceased attorney. If the attorney has designated an attorney to handle the closing of his or her

office that attorney should be contacted immediately. The attorney's will should be reviewed to determine if there was a specific attorney designated. If not in the will, it is possible that someone working with the attorney as an employee may have that information.

A designated attorney can insure that attorney-client confidentiality is maintained for the protection of the client. Hopefully, he or she has also had conversations with the attorney so that they are aware of what needs to be done with respect to closing or transferring the practice.

2. Work with staff. If the attorney had a secretary or assistants working with him or her at the time of death, contact them and determine what emergencies must be attended to and what needs to be done to begin the closing process.

If possible, retain and compensate staff during the closing phase of the practice. In many cases, staff members have a relationship with the clients of the practice and a great deal of knowledge that will be helpful to you as executor and to any attorney designated or appointed.

3. Preservation of the practice. Although the attorney has died, it may be important to the attorney's estate and his or her family to ensure that the value of the practice is maintained in order to allow the estate to sell the practice to another attorney or law firm, if that is a viable option. If an Assisting Attorney has been designated as described above, he or she may be the intended transferee. Consult with legal counsel for the estate to be certain that the proper steps are being taken to maintain the value of the practice within the estate.

4. Contact accountant. Contact the deceased attorney's accountant immediately to insure that work in process is properly billed, that receivables are collected and that all financial matters involving the practice are properly taken care of as soon as possible. All trust accounts should be carefully reviewed by estate counsel and the accountant for the firm to ensure that funds are properly handled during the administration of the estate.

5. Office matters. Contact the landlord and, if necessary, arrange for the assignment of the lease to the Assisting Attorney or firm, the termination of the lease or the subletting of the lease to another party.

Contact all vendors and stop services as soon as possible. This would include publishers who are providing services to the attorney's library. Cancel all subscriptions. Contact law schools, libraries or colleges to determine whether they would be interested in purchasing or receiving a donation of the library (if it is not to be transferred to another attorney).

Contact equipment leasing companies (including vehicle leasing companies) as soon as possible. In some cases, vehicle lease arrangements, among others will provide for

a termination of the lease in the event of death. This should be investigated. If leases cannot be terminated without penalty, subleasing should be considered. Otherwise, it will be necessary to set aside enough funds in order to pay the leasing fees for the duration of the lease terms.

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

Contact the Connecticut Judicial Branch, Office of Bar Counsel at 860-568-5157 and the Office of Disciplinary Counsel at 860-706-5055 and report the death of the lawyer. You may also wish to contact all associations with which the attorney had memberships and terminate the memberships. This would include the Connecticut, American and any local or specialty bar associations. Office staff should be helpful in determining what memberships are in effect.

Continue malpractice insurance if necessary. Most policies will provide that the insured must be insured at the time a claim is made against the attorney. Therefore, obtain "Reporting Endorsement Coverage" which will provide protection to the attorney's estate until all applicable statutes of limitations expire. The carrier may provide such coverage at no cost in the event of death. This should be determined immediately.

6. The Advisory Team. There will, of course, be many matters that must be handled during the administration of an estate. The items listed above are only a few of the many matters that must be addressed. However, a solo practitioner's practice is unique in that it cannot continue to operate during the administration of an estate without a licensed and qualified attorney in place to take care of clients' matters. Because it may not be possible for someone to immediately step in and take over a practice, it is extremely important that a team of qualified advisors be quickly assembled to insure that the practice and its clients are protected.

SPECIAL PROVISIONS FOR ATTORNEY'S WILL

INSTRUCTIONS REGARDING MY LAW PRACTICE

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

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

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

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

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

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

(a) Engage one or more attorneys to wind up my law practice, make arrangements to complete work on active files and to allocate compensation for past and future services.

(b) Continue employment of staff members to assist in closing my practice and arrange for their payment, and to offer key staff members such incentives as they deem appropriate to continue in such employment for as long as my Executors deem it appropriate.

(c) Request that the attorney(s) engaged to wind up the practice, with

my Executor's assistance, where appropriate:

(d) Enter my office and utilize my equipment and supplies as helpful in closing my practice.

(e) Obtain access to my safe deposit boxes and obtain possession of items belonging to clients.

(f) Take possession and control of all assets of my law practice including client files and records. Open and process my mail.

(g) Examine my calendar, files, and records to obtain information about pending matters that may require attention.

(h) Notify courts agencies, opposing counsel, and other appropriate entities of my death and, with client consent, seek and obtain extensions of time.

(i) Notify clients and those who appear to be clients of my death and that it is in their best interests to obtain other counsel

(j) Obtain client consent to transfer client property and assets to other counsel.

(k) Provide clients with their property and assets and copies of material in their files and return unearned retainers and deposits.

(l) File notices, motions and pleadings on behalf of clients who cannot be contacted prior to immediately required action.

(m) Contact my malpractice carrier concerning claims or potential claims, to notify of my death, and to obtain extended reporting or "tail" coverage.

(n) Dispose of closed and inactive files by delivery to clients, storage, and arranging for destruction, remembering that records of my trust account are to be preserved for at least seven years after my death as required by the Connecticut Lawyer's Code of Professional Responsibility or other provisions of law, and files relating to minors should be kept for five years after the minor's eighteenth birthday.

(o) Send statements for unbilled services and expenses and assist in collecting receivables.

(p) Pay current liabilities and expenses of my practice, terminate leases, and discontinue subscriptions, listing, and memberships.

(q) Determine if I was serving as registered agent for any corporations and, if so, notify the corporation of the need to designate a new registered agent (and perhaps registered address).

(r) Determine if I was serving as an Executor or Trustee of any

estate or trust, or in any other fiduciary capacity and, if so, determine the appropriate parties to be notified of the need, if any, to designate a successor fiduciary; take the steps deemed necessary to obtain discharge of my responsibilities in such fiduciary capacity.

(s) Rent or lease alternative space if a smaller office would serve as well as my present office.

In performing the foregoing, my Executor is to preserve client confidences and secrets and the attorney-client privilege and to make disclosure only to the extent necessary for such purposes. For example: Client files are to be reviewed only by employees of my firm, to whom attorney-client privilege attaches (e.g., my secretary, my paralegal, my associates (if any), or attorneys retained by my Executor to assist him in closing the practice). It is for this reason that I have authorized my Executor to retain the services of these personnel, and to give them sufficient incentives to remain in the employ of the firm through its wind-up.

Though there are special rules permitting disclosure of certain client information in connection with the sale of a practice, my Executor is to abide scrupulously with such rules. My Executor shall rely, without independent investigation, on employees of my firm to (i) supply data concerning the outstanding fees owed by my clients at the time of my death, and the unused retainers paid by clients for which services have not yet been rendered; (ii) to communicate with clients concerning the disposition of their files; and (iii) to review clients' files in response to any inquiries that arise in the course of my estate's administration.

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

CHECKLIST OF CONCERNS WHEN ASSUMING THE RESPONSIBILITY OF ANOTHER ATTORNEY'S PRACTICE WHETHER RESULTING FROM THE PURCHASE OF THE PRACTICE OR TERMINATION OF THE OTHER ATTORNEY'S PRACTICE

The term "Acquiring Attorney" refers to the attorney purchasing the law practice. "Terminating Attorney" refers to the attorney selling or otherwise terminating the practice.

1. Status of Files. If possible, the Acquiring Attorney and the Terminating Attorney should discuss the status of open files – what has been completed, what has not, what has been billed, etc.
2. Consider the overhead costs involved in acquiring a practice or the responsibility for a practice for an interim period.
3. Where the Acquiring Attorney does not have the expertise in one or more of the areas in which the Terminating Attorney practiced, he should refer such matters to other practitioners.
4. Immediately determine responsibility or the lack of responsibility for the IOLA and attorney escrow accounts. Rights and obligations of the Acquiring Attorney must be known – potential liability is significant.
5. Consider and recognize the personalities and practice habits of the Terminating and Acquiring Attorney. For example, if the Terminating Attorney met with clients in their homes or places of business, or if the staff was actively involved in the Terminating Attorney's client relations, etc., the Acquiring Attorney should consider continuing in this same manner or advising the clients of the Acquiring Attorney's practices.

Consider whether to maintain the same fee policy as the Terminating Attorney. If possible, determine in advance whether hourly rates or set fees will be used, and at what amounts; and, whether to use retainer agreements. Disclosure of these items is required under the disciplinary rules governing the sale of a law practice.

6. If time and the Terminating Attorney's condition allow, that attorney should introduce the Acquiring Attorney to non-lawyer staff members, and referral sources such as insurance agents, bankers, realtors, accountants with whom the Terminating Attorney worked. If the Terminating Attorney is not available to assist in this capacity, the Acquiring Attorney should make immediate contact with those individuals, not only for purposes of preserving client relations, but to determine location of clients, history of clients, etc. Many clients work with a team of advisors and with the client's consent, the Acquiring Attorney should have discussions with each of these other professionals.
7. Review and analyze the Terminating Attorney's technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Terminating Attorney or his or her staff should not only participate in transferring over current technology in use, but also should provide access to systems that historically have been used by the Terminating Attorney but which are not kept current. There is a significant amount of client information in the old files and

systems.

8. If a sale of the practice, whether by the terminating attorney or the estate, Rule 1.17 of the Rules of Professional Conduct must be fully reviewed and understood. There are critical notice and time requirements which must be followed. Note, however, that the commentary to Rule 1.17 acknowledges that a sale of assets by a lawyer or a firm is not a sale of a practice as defined by the Rule. Care and attention should be given as to how the transaction is structured.
9. Immediately notify the Terminating Attorney's accountant and/or bookkeeper and schedule a meeting in order to fully understand the financial reporting policy and habits of the Terminating Attorney. If the Terminating Attorney did his or her own accounting and tax preparation, the Acquiring Attorney's accountant should be given immediate access to those books and records that may be available to determine tax and financial liabilities of the Terminating Attorney and the Acquiring Attorney.
10. Contact firms or practices with which the Terminating Attorney was associated to determine whether any files remain with those practices. This will save the Acquiring Attorney a significant amount of time "searching" for files demanded by clients for past representation by the terminating attorney. Also determine who bears the cost and the responsibility for acquiring or copying those files: the Acquiring Attorney, the Terminating Attorney or the court or other agency that has taken over the primary responsibility for the Terminating Attorney's practice.
11. Consider file storage. The older the practice, the more time and expense will be involved in file review and management.
12. Determine whether "closed" files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased and closes a file. Others may never take this step and always assume that the client may be coming back for further representation.
13. In returning files, ensure that you are returning files to the "client." Obtain appropriate consents before returning files to individual spouses.
14. Review "vendor" relationships with the Terminating Attorney's vendors to determine whether prepayments were made for services or products that are not going to be used and whether bills are due for storage of files, stationery, supplies, etc.
15. In open estate files, determine whether the Terminating Attorney's practices are consistent with the acquiring attorney's practices with respect to what services are covered on a quoted fee. For example, is a fee for probate limited to just the probate of the will or does it cover estate tax return preparation, will contests, etc. Carefully review retainer letters and send modifications if necessary. Arrangements differ. As the Acquiring Attorney, make sure you know what you are agreeing to before stating that you are honoring "all" the fee arrangements with all the clients.
16. Review accounts receivable when you are purchasing an attorney's practice. You may need to take steps with clients who have a poor payment history.

17. Consider referring a client to another attorney. Know your limitations, both with time and expertise. You need not assume all clients as an Acquiring Attorney.
18. When returning files to clients who have requested them, make a decision as to what you are returning. Will it be everything in the file? Are you responsible for anything in the file for which you will want to retain copies for your own liability protection? Are there documents that should be retained for the benefit of the terminating attorney so that he or his estate could defend any claims against them? Proceed with caution.
19. Continuing liability insurance. If the attorney has died or has retired from practice, reporting endorsement coverage or “tail coverage” should be obtained. In the event of death, the policy may provide reporting endorsement coverage for a period of time at no additional cost

SAMPLE PURCHASE AND SALE AGREEMENT FOR ASSET OR BUSINESS SALE

[NOTE: THIS IS A SAMPLE AGREEMENT ONLY CONTAINING SOME CLAUSES IDENTIFYING SOME ISSUES THAT MAY BE USED IN A PURCHASE/SALE AGREEMENT. IT IS FOR ILLUSTRATIVE PURPOSES ONLY. CONSULT COMPETENT COUNSEL WHEN DRAFTING SUCH AN AGREEMENT.]

THIS AGREEMENT is entered into as of the ___ day of [date], by and between _____, ("Seller") and _____ ("Purchaser"), an attorney licensed

W I T N E S S E T H :

WHEREAS, Seller is an attorney [is the attorney in fact for an attorney/is the executor or administrator of the estate of [name] a deceased attorney] and:

WHEREAS, at the time of _____'s death, had in his possession and owned certain Assets (as defined below) which assets are now in the possession of Seller; and

WHEREAS, Seller desires to sell the Assets and Purchaser desires to purchase the Assets.

NOW, THEREFORE, in consideration of the mutual promises and premises contained herein, the sum of One Dollar (\$1.00), each to the other paid in hand, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale of [Assets/Business]. In accordance with the terms and conditions contained herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of the Seller's clients records and files pertaining to [name]'s client files and matters as such records and files were utilized by [name] in the operation of his practice of law ("Business").

Notwithstanding the foregoing, Purchaser shall have the right to reject any client file which would result in a conflict of interest to Purchaser or for any other reason as determined by Purchaser. In the event Purchaser elects to reject or decline any client matter or file, Purchaser will use its reasonable best efforts

to assist the client in engaging substitute legal counsel.

2. Definitions. Whenever used in this Agreement:

(a) "Assets" shall mean those assets of the utilized in the operation of his business and in [name]'s possession or under [name]'s control on the date of his death, as specifically set forth on Exhibit _____, attached hereto and made a part hereof, including but not limited to Seller's client records (in paper and electronic formats), telephone numbers and goodwill.

(b) "Closing Date" means the execution date of this Agreement.

(c) "Closing Place" shall be at the offices of Seller, in [city], Connecticut, or such other place as the parties may mutually agree.

(d) "Liabilities" shall mean all liabilities of Seller, including but not limited to, any liabilities to employees of any nature, accounts payable, payroll taxes, promissory notes or liabilities for taxes based on income, sales, use, employment or otherwise.

3. Purchase Price and Allocation.

(a) Purchase Price. The purchase price for the [business/assets] to be purchased hereunder shall be _____ and 00/100 Dollars (\$ _____) ("Purchase Price").

(b) Allocation. The Purchase Price shall be allocated among the Assets in accordance with Exhibit _____. Seller and Purchaser jointly shall complete and separately file Form 8594 with their respective federal income tax returns for the tax year in which the Closing Date occurs in accordance with such allocation and the IRS guidelines, and neither Seller nor Purchaser shall, without the written consent of the other, take a position on any tax return or before any governmental agency charged with the collection of any such tax, or in judicial proceeding, that is in any manner inconsistent with the terms of such allocation.

4. Method of Payment. Upon execution of this Agreement, the Purchase Price shall be paid in thirty-six (36) equal monthly installments commencing on the ____ (____) day of _____ 201__ of _____ and 00/100 Dollars (\$ _____) each and a final payment on the ____ (____) day of _____ 201__ of _____ and 00/100 Dollars (\$ _____) pursuant to the terms and conditions of a promissory note, attached hereto as **Exhibit** _____, and made a part hereof (the "Note"). Interest on the outstanding balance shall be computed at the rate of _____ percent (____%) per annum. An amortization schedule shall be attached as a Schedule to the Note.

5. Exclusion of Seller's Other Assets. Purchaser is not acquiring any right, title or interest in or to the following:

(a) Seller's cash or cash equivalents;

(b) Any personal belongings of Seller;

- (c) Seller's Accounts Receivable; and
- (d) Seller's office equipment and office supplies.

6. Accounts Receivable. Purchaser shall not purchase, and Seller shall not sell, any right, title, or interest in Seller's accounts receivable ("Accounts Receivable"). Seller shall continue to collect his outstanding Accounts Receivable after the Closing. If, at any time after the Closing Date, Purchaser shall collect or receive any monies, in any manner whatsoever, in payment of any of Seller's Accounts Receivable, Purchaser shall immediately forward such amount(s) to Seller at no cost to Seller.

7. Assumption of Liabilities. Purchaser shall not assume any Liabilities of Seller whether firm or contingent, known or unknown. In addition to the foregoing, Purchaser [shall/shall not] assume Seller's IOLTA accounts. Seller was signatory on one or more accounts containing clients funds for the benefit of Seller's clients, as such account, client sub-accounts and a general ledger of such are set forth on Exhibit _____, attached hereto and made a part hereof. Exhibit _____ shall be certified by Seller as to the correctness thereof. Purchaser shall use its reasonable best efforts to comply with the provisions of Rule 1.15 of the Rules of Professional Conduct pertaining to the designation of successor signatories with respect to Seller's IOLTA funds provided, however, that Purchaser shall not assume or be liable for any inaccuracies or liability with respect to such accounts. Seller will indemnify and hold Purchaser harmless for any and all liability, cause of action or loss with respect to such IOLTA account.

8. Transfer of Client Records. At Closing, Seller shall deliver to Purchaser his files and records (including but not limited to all electronic records related to such files) relating to all clients included on Exhibit _____ for which Seller has provided services. Exhibit _____ shall include a list of all client names and all addresses of such clients. Seller and Purchaser shall comply with Rule 1.17, Rule 1.15 and any and all other applicable Rules of Professional Conduct pertaining to the sale of a law practice in all respects, including the written notice to each of Seller's clients. Seller will cooperate with Purchaser and assist Purchaser with obtaining any client consents that may be required in order to transfer any client property to Purchaser.

9. Delivery of Documents.

(a) At the Closing, Seller shall deliver to Purchaser the following:

- (i) a bill of sale and an assignment which effectively transfer, assign and convey to Purchaser good and marketable title to all of the Assets free and clear of all mortgages, pledges, liens, security interests, restrictions, or other encumbrances;
- (ii) all Assets subject to the terms of this Agreement; and
- (iii) all other documents, instruments or writings required to be delivered to Purchaser at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Purchaser may reasonably request.

(b) At the Closing, Purchaser shall deliver to Seller the following:

- (i) the Promissory Note;
- (ii) cash or a certified check for sales tax pursuant to this Agreement;
- (iii) all other documents, instruments or writings required to be delivered to Seller at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Seller may reasonably request.

10. Seller's Representations and Warranties. Seller makes the following representations and warranties to Purchaser, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by Purchaser, or any knowledge of Purchaser other than as specifically disclosed in the disclosure schedules delivered to Purchaser at the time of the execution of this Agreement, and shall survive the Closing of the transaction provided for herein.

(a) Authority. This Agreement constitutes a valid and binding agreement of Seller in accordance with its terms and does not require any consent, notification to or other action of any person, entity or governmental agency other than filings with respect to sales and other transfer taxes. Seller has complete power to own and to sell, transfer and deliver all assets to be transferred hereunder and instruments to be executed to vest effectively in Purchaser good and marketable title to the Assets.

(b) Effect of Agreement. The execution, delivery and performance of this Agreement by Seller is not conditioned on or prohibited by, and will not conflict with or result in the breach of the terms, conditions or provisions of, or constitute a default under any law applicable to Seller or any agreement or instrument to which Seller is a party or is otherwise subject.

(c) Licenses and Permits. At the time of [_____] 's death/sale], Seller was in compliance with all permits, licenses, franchises and authorizations necessary for the operation of his law practice (the "Business") as operated and all such permits, licenses, franchises and authorizations were, at the time of's death, valid and in full force and effect. All applications, reports and other disclosures relating to the operation of the Business required by the appropriate governmental bodies have been filed or will have been filed by the Closing in a timely manner.

(d) Assets.

(i) **Schedule _____** hereof contains a complete and accurate list, as of the date hereof, of certain assets owned or leased by Seller which are used or useful in the operation of the Business and which are being purchased by Purchaser.

(ii) On the Closing Date, Seller shall have good and marketable title to all the Assets, free and clear of all mortgages, liens (statutory or

otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, easements, covenants, reservations, restrictions, exceptions, limitations, charges, encumbrances or any rights of any third parties of any nature whatsoever (collectively, "Liens").

(iii) All tangible assets constituting Assets hereunder are in good operating condition and repair, free from any defects (except such minor defects as do not interfere with the use thereof in the conduct of the normal operations of Seller), have been maintained consistent with Seller's historical practice and are sufficient to carry on the business of Seller as conducted during the preceding twelve (12) months.

(e) Insurance. All of the Assets used or useful in the operation of the Business which are to be conveyed to Purchaser hereunder and which are of an insurable character are insured above deductible limits by financially sound and reputable insurance companies against loss or damage by fires and other risks to the extent and in the manner customary for such assets. Copies of the pertinent insurance policies have been delivered to Purchaser and are in full force and effect. Seller will maintain such insurance between the date hereof and the Closing Date. There are no pending claims. No notice of cancellation or termination has been received with respect to any such policy.

(f) Litigation. There is as of the date hereof no suit, action or legal administrative arbitration or other proceeding or governmental investigation (including workers' compensation claims) pending or threatened against the Seller, including without limitation, any malpractice suit, action or legal proceeding against Seller.

(g) Taxes. Seller has duly filed with the appropriate federal, state and local governmental agencies all tax returns and reports which are required to be filed by Seller, and has paid in full all taxes (including interest and penalties) owed by Seller arising prior to the Closing Date. Seller is not a party to any pending action or proceeding, nor, to the best knowledge of Seller, is any action or proceeding threatened, by any governmental authority for assessment or collection of taxes, and no claim for assessment or collection of taxes has been asserted against Seller.

(h) Contracts. Each contract, agreement, lease and commitment to which Seller is a party is in full force and effect and constitutes a valid and binding obligation of, and is legally enforceable in accordance with its terms against, the parties thereto. There are no leases that affect any of the Assets.

(i) Financial Statements. Seller has delivered to Purchaser true and complete copies of the income tax returns of Seller relating to the operation of the Business consisting of tax returns as of December 31, of the three (3) most recent years, and the related statements of income and cash flows since such dates (the "Recent Balance Sheet"). All of such financial statements (including all notes and schedules contained therein or annexed thereto) are true, complete and accurate, have been prepared in accordance with Seller's historical practices

applied on a consistent basis, have been prepared in accordance with the books and records of Seller, and fairly present, in accordance with Seller's historical practices, the assets, liabilities and financial position, the results of operations and cash flows of Seller as of the dates and for the years and periods indicated. Seller shall prepare his 2001 Form 1040 Schedule "C" and any interim statements in accordance with his historical practice and shall deliver the same to Purchaser immediately upon completion.

(k) Accounts Payable. There are no accounts payable of the Seller regarding the Business.

(l) Client Relations. There exists no condition or state of facts or circumstances involving the Seller's clients that Seller can reasonably foresee could adversely affect the Business after the Closing Date. To Seller's knowledge, the Business may be maintained after the date hereof in the same manner in all respects (financial and otherwise) as at the time of _____'s death.

(m) Absence of Certain Changes. Since [date], Seller has operated the business in the ordinary course consistent with historical practice.

(n) Absence of Undisclosed Liabilities. Except as and to the extent specifically disclosed in the Recent Balance Sheet, Seller does not have any liabilities relating to the operation of the Business.

(o) General Representation and Warranty. Neither this Agreement nor any other document furnished by Seller in connection with this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained herein or therein not misleading in any material respect. There is no fact or circumstance known to Seller which materially adversely affects, or in the future, as now reasonably foreseeable, is likely to materially adversely affect the condition (financial or otherwise), properties, assets, liabilities, business, operations or prospects of the Business which has not been set forth in this Agreement or the schedules hereto.

(a) Disclosure. No representation or warranty by Seller in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Seller pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading.

11. Representations, Warranties and Covenants of Purchaser. Purchaser does hereby represent and warrant that:

(a) Organization of Purchaser. Purchaser is duly organized, validly existing, and in good standing under the laws of the State of Connecticut. Purchaser has full power and authority to own its assets and to carry on its business as presently conducted.

(b) Authority to Purchase. Purchaser has all necessary right,

authority and power to execute and deliver this Agreement and to consummate the transaction contemplated hereunder. The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly and validly authorized by the shareholders and directors of Purchaser and no other corporate or other approvals are required and (ii) to Purchaser's knowledge, will not materially violate any provision of law and will not conflict with, result in a breach of any of the terms, conditions or provisions of, or constitute a default (or an event which with the giving of notice or the lapse of time or both would constitute a default) under or pursuant to any corporate charter, bylaw, indenture, note, mortgage, lease, license, permit, agreement or other instrument to which Purchaser is a party. When executed and delivered by Purchaser, this Agreement is a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

(c) Litigation. There is no litigation pending or threatened against Purchaser.

(d) Accuracy of Representations and Warranties on the Closing Date. Each of the representations and warranties set forth in this Paragraph 11 shall be true and correct as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

12. Rights of Indemnification.

(a) Survival of Covenants, Warranties and Representations. All covenants, agreements, representations and warranties of the parties under this Agreement, in any Schedule or certificate or other document delivered pursuant hereto, shall remain effective through and shall survive the Closing Date as provided for herein regardless of any investigation at any time made by or on behalf of Purchaser or of any information Purchaser may have with respect thereof.

(b) Indemnification of Purchaser. Seller shall defend, indemnify and hold Purchaser harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets prior to or on the Closing Date, irrespective of when asserted and (B) a breach of any of Seller's representations, warranties or covenants hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys' fees) incident to any of the foregoing.

(c) Indemnification of Seller. Purchaser shall defend, indemnify and hold Seller harmless from and against (1) any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or relative to (A) the operation or ownership of the Business or the Assets on and after the Closing Date and (B) a breach of any of Purchaser's representations and warranties hereunder, and (2) any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses (including reasonable attorneys'

fees) incident to any of the foregoing.

(d) Summary of Obligations. The obligations and rights of the parties under this Paragraph 12 shall survive the Closing Date and shall be binding upon and inure to the benefit of their respective successors and assigns.

13. Additional Agreements of Seller.

(a) Conduct of Business Pending the Closing Date. Seller shall use its best efforts to preserve for Purchaser its present relationships with clients and others having business relationships with Seller that pertain to the Business. Seller will immediately notify Purchaser if there is the loss or expected loss or other disruption of any relationship between Seller and a vendor, customer or employee.

(b) No Material Contracts. Seller shall not enter into any contract or commitment pertaining to the Business, except contracts or commitments which are in the ordinary course of business and consistent with past practice and are not material to the Business (individually or in the aggregate).

(c) Maintenance of Insurance. Seller shall maintain all of the insurance related to the Business and the Assets in effect as of the date hereof and shall procure such additional insurance as shall be reasonably requested by Purchaser.

(d) Maintenance of Property. Seller shall use, operate, maintain and repair all assets of Seller which are defined herein as Assets in a normal business manner.

(e) No Negotiations. Seller shall not directly or indirectly (through a representative or otherwise) solicit or furnish any information to any prospective buyer, commence, or conduct presently ongoing, negotiations or discussions with any other party or enter into any agreement with any other party concerning the sale of the Business or the Assets or any part thereof, and Seller shall immediately advise Purchaser of the receipt of any such acquisition proposal.

(f) Disclosure. Seller shall have a continuing obligation to promptly notify Purchaser in writing with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the disclosure schedules, but no such disclosure shall cure any breach of any representation or warranty which is inaccurate. In the event that Seller discovers a breach and notifies Purchaser pursuant to this Paragraph 13(f), Seller shall have three (3) days to cure such breach.

(g) Open Matters. The client files and matters described on a Schedule attached hereto shall be considered ongoing matters for which was providing services at the time of his death. Such matters and the clients (and

client records) for whom such matters were being performed shall be included in the terms of this Agreement. Subject to Purchaser's right to exclude any clients hereunder and the client's right to obtain other counsel, Purchaser agrees to cooperate with Seller and the professional staff of in bringing such matters to a conclusion. Seller and Purchaser shall cooperate in notifying such clients that Seller has transferred his Business to Purchaser and shall advise such clients in the same manner as the notice to be delivered pursuant to Paragraph 21 below. For services rendered for such Open Matters, Purchaser shall charge an hourly rate of _____ and 00/100 Dollars (\$_____.00) for attorney services and _____ and 00/100 Dollars (\$_____.00) for paralegal services. In the event that Seller has been previously paid by such clients, the amount of any services shall be offset against the Purchase Price set forth hereunder. In such an event Purchaser shall provide Seller with an itemization of the services provided, the time incurred on such matters and the cost of such time. In the event such matter shall include additional services outside the scope of the client's agreement with the Seller, the Purchaser shall negotiate a separate fee arrangement with the client.

(h) Seller's Independent Contractor. Except in the case of death or disability, for a period of not less than _____ (_____) months, _____, shall provide services to Purchaser in the same manner and to the same extent as provided to [name] _____ prior to the date of sale [his death], in order to assist Purchaser in the acquisition of assets hereunder and the transition of [name]'s practice to Purchaser. Purchaser shall be responsible for the compensation of _____ during this _____ (____) month period with respect to such services.

14. Conditions Precedent to Purchaser's Obligations. The obligation of Purchaser to consummate the transactions contemplated hereunder is subject to the satisfaction at or prior to the Closing of the following (unless waived in writing by Seller):

(a) Representations, Warranties and Covenants. The representations, warranties and covenants of Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though made at and as of the Closing Date, except for changes contemplated by this Agreement.

(b) Performance. Seller shall have complied with all agreements, obligations, covenants and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

(c) Absence of Litigation. No litigation shall have been commenced or threatened, and no investigation by any government entity shall have been commenced against Purchaser or Seller or any of the affiliates, officers or directors of any of them, with respect to the transactions contemplated hereby.

(d) Satisfactory Due Diligence Review. Purchaser shall have completed by the Closing Date a due diligence review satisfactory to Purchaser with respect to, among other matters, the business, operations, assets, contracts,

legal compliance and future prospects of the Business, all of which shall be confidential and not disclosed to any third party by Purchaser.

15. Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated hereunder are subject to satisfaction at or prior to the Closing of the following (unless waived in writing by Purchaser):

(a) Representations, Warranties and Covenants. The representations, warranties and covenants of Purchaser contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though such representations, warranties and covenants were made at and as of such time.

(b) Performance. Purchaser shall in all material respects have complied with all agreements, obligations and conditions required by this Agreement to be met, performed or complied with by it prior to or at the Closing.

(c) Delivery of Purchase Price. Purchaser shall have delivered to Seller the Note.

(d) Litigation. No Litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced, against Purchaser or Seller with respect to the transactions contemplated hereby; provided that the obligations of Seller shall not be affected unless there is a reasonable likelihood determined by Purchaser that as a result of such action, suit, proceeding or investigation, Seller will be unable to transfer the Assets in accordance with the terms set forth herein.

16. Endorsement Reporting Coverage. Seller agrees to maintain, at its expense, professional liability insurance coverage or reporting endorsement coverage of insurance for the term commencing on the date of Closing and continuing thereafter for a period of time not less than the applicable statute of limitations for any legal services provided by Seller pursuant to Section 214(6) of the Connecticut State Civil Practice Rules and Procedures, prior to or following closing.

17. Expenses. Whether or not the transaction contemplated herein is consummated, each party hereto shall bear all costs and expenses incurred by it in connection with this Agreement and the transactions contemplated hereby.

18. Notices. Any notice or other communication required or permitted hereunder shall be sufficiently given if labeled conspicuously in bold letters "PERSONAL AND CONFIDENTIAL", and mailed personally or sent by registered or certified mail, postage prepaid, or by facsimile transmission or telex immediately confirmed in writing sent by registered mail or certified mail, postage prepaid, addressed, to:

or to such other person or address as shall be furnished in writing by any party to the others prior to the giving of the applicable notice of communication, and such notice or communication shall be deemed to have been given as of the date so delivered or sent.

19. Employees. Purchaser shall not be required to employ any employees of Seller and Seller shall be responsible for the termination of any employees it does not desire to retain following Closing. To the extent Purchaser desires, it shall have the opportunity to interview any of Seller's employees or independent contractors, including _____ for possible employment by Purchaser upon such terms and conditions as Purchaser determines. Such interviews shall take place prior to Closing with the consent of Seller, which shall not be unreasonably withheld.

20. Right of Set-Off. In the event Purchaser suffers any loss for which Seller is obligated to indemnify Purchaser hereunder, and Seller for any reason fails or refuses to pay the same, Purchaser shall have as the means of recovery for any loss (in addition to any other remedies at law or in equity), the right to set-off against any sums due to Seller pursuant to this Agreement. Purchaser's right of set-off shall not be subject to any order of priority, and shall be exercisable in such amounts (not to exceed the amounts of any such loss) and in such manner as Purchaser in its reasonable discretion may determine.

21. Client Letter. Upon execution of this Agreement, Purchaser and Seller, in accordance with Rule 1.17 of the Rules of Professional Conduct shall provide written notice to Seller's clients, in form and substance of **Exhibit _____**, attached hereto and made a part hereof, at Purchaser's expense, of Purchaser's acquisition of Seller's practice of law. Such written notice shall include information regarding:

- (a) The client's right to retain other counsel or to take possession of the file;
- (b) The fact that the client's consent to the transfer of the client's file or matter to the Purchaser will be presumed if the client does not take any action or otherwise object within ninety (90) days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;
- (c) The fact that agreements between the Seller and the Seller's clients as to fees will be honored by the Purchaser;
- (d) Proposed fee increases, if any; and
- (e) The identity and background of the Purchaser and

Purchaser's employees, including principal office address, bar admissions, number of years in practice in the state, whether Purchaser, or any employee of Purchaser, has ever been disciplined for professional misconduct or convicted of a crime, and whether Purchaser currently intends to re-sell the practice.

22. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore made between the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement between the parties hereto and that this Agreement has been entered after full investigation, neither party relying upon any statement or representation which is not herein contained. This Agreement may not be changed or terminated orally.

23. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Connecticut.

24. Binding Provisions. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, assigns and all other successors-in-interest.

25. Sales Tax. Purchaser shall pay any sales tax due and payable by reason of the consummation of the transaction herein contemplated. Payment for the taxes shall be made by Purchaser to Seller who shall remit such sales tax to the appropriate taxing authority. Purchaser shall indemnify Seller for any and all sales taxes paid by Seller by reason of consummating this transaction.

26. Headings. The paragraph and clause headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

27. Miscellaneous.

(a) Waiver of Conditions. Any party may, at his or its option, waive in writing any or all of the conditions herein contained to which his or its obligations hereunder are subject.

(b) Variation and Amendment. This Agreement may be varied or amended at any time by joint action of the Seller and Purchaser.

(c) Assignment. This Agreement may not be assigned by Seller or Purchaser without the prior written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and seals the date and year first above written.

PURCHASER:

SELLER:

