

ESTABLISHING AN ADVANCE EXIT PLAN: STEPS TO TAKE WHEN LEAVING DUE TO PERSONAL REASONS, DISABILITY OR DEATH

STEP 1: Designate a Successor 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 “Agreement to Close a Law Practice in the Future,” “Authorization and Consent to Close Law Office in the Future,” and “Limited Power of Attorney to Manage Law Practice at a Future Date.”

STEP 2: Prepare written instructions to your family, your designated Successor 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 the Health Insurance Portability and Accountability Act) that may be needed to determine your incapacity (See HIPAA release form);
- Specific and detailed information and authorizations needed to close your law practice;
- Steps to be taken to assure that your written instructions are updated and reviewed periodically for completeness and accuracy.

See “Checklist for Lawyers Planning to Protect Clients’ Interests in the Event of the Lawyer’s Death, Disability, Impairment or Incapacity” and “Checklist for Closing Your Own Office.” See in Chapter 1, a form that lists your Law Office contacts, which should be kept up to date and given to your family, staff, and/or Successor Attorney.

STEP 3: Discuss your Advance Exit Plan with the appropriate persons (e.g., your family, designated Successor Attorney, nominated executor, and 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 a Successor Attorney. Not only will this protect your practice, it will also save considerable time and expense that may be incurred in the administration of your estate. The “Law Firm Master List of Contacts and Important Information” and “Special Provisions for Attorney’s Will: Instructions Regarding My Law Practice” provide you with a checklist for your executor, and a sample provision that can be used in your will giving instructions to your executor regarding your law practice.

STEP 4: Your Advance Exit Plan should describe arrangements you enter into with your designated Successor Attorney. (See “Agreement to Close Law Practice in the Future,” “Authorization and Consent to Close Law Office,” and “Limited Power of Attorney to Manage Law Practice at a Future Date.”, which are sample forms that could be used to accomplish this objective.) They should cover the following:

- Authorization to obtain medical information to assist the Successor Attorney (or other designated person, e.g., family member) in determining your incapacity to continue in practice (See HIPAA release form.)
- Authorization to provide all relevant people with notice of closure of your law practice;
- Authorization to your Successor 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 “Authorization for Transfer of Client File,” “Request for File,” and “Acknowledgment of Receipt of File” - (Appendices E, F, and G.)

In Chapter 3, File Retention, you will find information on the subject of file retention 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 Absent Attorney Advising that Lawyer is Closing 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 (See “Letter from Closing or Successor Attorney Advising That Lawyer is Unable to Continue Law Practice.”)

Your Advance Exit Plan also should include instructions as to:

- Disposition of closed files;
- 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;

- 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 Successor 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; or
- Liquidate or sell your practice. (See *Sale of a Law Practice Guide*.)

We encourage you to develop and implement an Advance Exit Plan utilizing the basic guidelines discussed above. You can accomplish this now, at little or no expense, to protect your clients' and your own interests. Don't put it off – start the process today and keep it current and complete.

Compensation to Your Assisting Attorney and Staff

Your Advance Exit Plan should include an arrangement for payment by you or your estate to your Successor Attorney 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 Successor 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 should address the issue of how to fund this compensation to your Successor Attorney 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 nonlawyer 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 Successor Attorney, 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 including those instructions in your will, especially if you have not made 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 Successor Attorney 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.

Conflicts of Interest and Confidentiality

Although the designation of a Successor Attorney to assume responsibility for client files raises issues of client confidentiality, it is reasonable to read the Rules of Professional Conduct as authorizing such access and disclosure under these circumstances (GRPC 1.6, GRPC 1.9 and GRPC 1.17). Remember that if a Successor Attorney discovers evidence of legal malpractice or ethical violations, he or she may have an ethical obligation to take appropriate action. (See “What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.”)

Your Successor Attorney also must be aware of conflict of interest issues and do a conflicts check if he or she is either providing legal services to your clients or reviewing confidential file information to assist with referral of your clients’ files. Your Successor Attorney should be prepared to delegate to another attorney those files with which he or she has a conflict of interest, while being careful to protect materials and information that may be subject to attorney-client privilege or duty of confidentiality. (See “What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.”)

Trust Accounts

If you do not make arrangements to allow another attorney access to your attorney trust account, your clients' money must remain in trust until a court authorizes access. This is likely to cause delay and put your clients and you in a difficult position if you are unable to conduct your practice. On the other hand, allowing access to your trust account is a serious matter. If you give access to your trust account to another attorney and that lawyer misappropriates money, then your clients will suffer, and you may be held responsible. There is no simple answer to this dilemma and other important decisions which you must make regarding your trust account. (See "What If? Answers to Frequently Asked Questions About Closing a Law Practice on a Temporary or Permanent Basis.")

First, you must decide whether to appoint a co-signatory prior to your disability, or to grant access to the account at a specified future time or event. If you decide to allow access to your trust account by your Successor Attorney all of the time, then you can authorize the attorney as a signer on your accounts and contact the bank to sign all appropriate cards and paperwork. This allows easy access on the part of your Successor Attorney if, for example, you are unexpectedly delayed on a trip. However, it opens the door to a host of other risks, as you are unable to control the signer's access. If you prefer not to have a co-signatory on your trust account while you are able to conduct your practice, you may nevertheless plan in advance and give such authority in the future. One option is to give your Successor Attorney a power of attorney that takes effect upon your disability and includes as a power the authority to withdraw funds from your trust account. You may want to leave the executed power of attorney with a third party whom you trust to ensure that it will not be released until the specified event, e.g., disability, occurs.

Another option is to give your Successor Attorney access to your trust account in an agreement or consent and authorization form. (See "Agreement to Close Law Practice in the Future Authorization," "Consent to Close Law Office, and "Limited Power of Attorney to Manage Law Practice at a Future Date.") Again, the power may be conditioned upon the occurrence of a specified event. However, unlike a power of attorney, which ceases upon death, the agreement can authorize your Successor Attorney to operate your trust account upon and after your death. In such case, this power may be used by your Successor Attorney in winding up your practice.

Whichever method you choose, remember to check with the bank that holds your trust account to ensure that your power of attorney or agreement is acceptable to it and to sign additional documents that may be required. The Georgia Rules of Professional Conduct have detailed procedures which should be reviewed carefully by you and your Successor Attorney to ensure that the appropriate steps are taken to safeguard all trust funds and to have the funds delivered to the appropriate parties on a timely basis. (See GRPC 1.16, GRPC 1.15(I) and the State Bar of Georgia, Law Practice Management Program handbook *Trust Accounting for Attorneys in Georgia*.)

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 Successor Attorney 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, tribunals, 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.

In effect, you must create a system for the orderly winding up of your law practice and the settlement of your own estate. See “Checklist for the Fiduciary of a Solo Practitioner;” “Law Firm Master List of Contacts and Important Information” and “Special Provisions for Attorney’s Will Regarding My Law Practice.”

Other Steps

There are other steps that you can take while you are in practice to make the closing of your office relatively 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 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;
- Keeping your time and billing records up to date;
- Familiarizing your Successor Attorney with your office systems;
- Reviewing and updating on a regular basis your written agreement with your Successor Attorney;
- Periodically purging old and closed files (see chapter on File Retention);
- Periodically communicating with clients for whom wills or other original documents are held by your firm to confirm that addresses are up to date and what documents are still relevant.

If your office is organized and in good order, your designated Successor Attorney 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 that may be sold and the proceeds remitted to you or your estate.

Special Considerations in the Event of Death

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 ensuring that all obligations to clients are met.

If you have designated a Successor Attorney 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 Successor Attorney 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 Successor Attorney and refers, specifically, to the Advance Exit Plan, if appropriate.

Whether or not you have an Advance Exit Plan, it is critical that you have a current will so that management and closing or transfer of your law practice can be addressed without delay and attendant harm to clients.

You also should consider a source of funding to compensate your designated Successor Attorney, office staff, or attorney and staff retained by your executor who will be working during this transition period. Since your practice may be your principal 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.