

STATE OF WEST VIRGINIA
OFFICE OF DISCIPLINARY COUNSEL
CITY CENTER EAST
SUITE 1200C
4700 MacCORKLE AVENUE SE
CHARLESTON, WEST VIRGINIA 25304
Office: (304) 558-7999
Fax: (304) 558-4015
Website: www.wvdc.org

Establishing a Succession Plan:

A Guide to Protecting Your Clients' Interests
in the Event of Your Disability, Retirement, or Death

Prepared by the West Virginia Lawyer Disciplinary Board
End of Practice Committee
Updated March 1, 2016– RLFC

Thinking about the What Ifs?¹

The closure of a law practice can come as a result of many factors: retirement, merging firms, sudden illness, accidental death or even an appointment to the bench. While some of these events are difficult to think about and involve different parameters, some basic similarities, which you can control, do exist.

On January 1, 2015, the Supreme Court adopted changes to the Rules of Professional Conduct, specifically Rule 1.3 – Diligence– indicates that if you are a solo practitioner it is your general duty to provide competent representation under Rule 1.3 of the Rules of Professional Conduct provides for an obligation to take appropriate steps to safeguard your clients’ interests in all circumstances. See also ABA Formal Op. 92-369. A failure to properly plan or prepare for both anticipated and unexpected departures from your practice may expose your clients to significant damages or prejudice and subject law partners and family members to financial and emotional stresses associated with the winding-up process.

Attorney professionalism is often equated with dedication to clients, service to others, competence in legal practice and a display of sound judgment. This is, by no means, an easy process and it will involve difficult questions. But by formulating a succession plan, you can fulfill your ethical obligations to your clients, your responsibilities to your profession, and ease your family’s burden in stressful times.

The West Virginia Lawyer Disciplinary Board, based upon its experience in dealing with the unexpected closure of law practices, has prepared this guide to assist you in the process of formulating a succession plan for your practice so that the transfer of the obligations you owe to your clients can occur in a more orderly manner in the event of a crisis. While the WVLDB has attempted to contemplate a wide range of scenarios, it is nearly impossible to address every question and situation. For specific questions which are not addressed in this guide, please contact the Office of Disciplinary Counsel or the West Virginia Lawyers Assistance Program.

¹The West Virginia Lawyer Disciplinary Board gratefully acknowledges the work done by the Oregon State Bar Liability Fund, the Washington State Bar Association, and the North Carolina State Bar on succession plans. Their excellent work, and the work of many other State Bars, was consulted and utilized in the production of this guide.

It is noted that there are instances when the Office of Disciplinary Counsel initiates the closure of a law practice either due to disciplinary proceedings against a lawyer or through other notice to ODC. Currently, when a member of the West Virginia State Bar has disappeared, died or has abandoned his or her law office or has been suspended or disbarred and there is evidence that the lawyer has not complied with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure (Duties of disbarred or suspended lawyers), and **no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist**, the Supreme Court of Appeals of West Virginia, upon written request by Disciplinary Counsel, may authorize the chief judge in the circuit in which the lawyer maintained his or her practice, to appoint a lawyer or lawyers to take such action as seems indicated to protect the interests of the lawyer and the lawyer's clients. See Rule 3.29 Rules of Lawyer Disciplinary Procedure. A lawyer who is appointed in this matter is referred to as a "trustee" attorney. Nearly every jurisdiction has a method of appointing a trustee or supervising lawyer to protect the interest of a lawyer and the lawyer's clients in certain disciplinary proceedings.²

If lawyers fail to have a succession plan in place at the time of the death or disability and there is no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, or the lawyer failed to comply with Rule 3.28 after disbarment or suspension, ODC will seek to have a trustee appointed pursuant to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure. The Court also adopted important changes to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure in November of 2015 that provide that the lawyer for whom a trustee has been appointed or the estate of a deceased lawyer for whom a trustee has been appointed is liable to the trustee for all reasonable fees, costs, and expenses incurred by the trustee as approved by the appointing court. To the extent that the approved trustee's fees, costs, and expenses are paid by the disciplinary authority or other third party, the lawyer or the estate shall be liable to make reimbursement to the disciplinary authority or other third party for such payment.

However, the purpose of this guide is to address those situations wherein an attorney is not otherwise involved in disciplinary proceedings. Moreover, this guide is intended for use by those lawyers who have no partners, associates, or employees. For it is often in the solo practice where the phone will go unanswered, mail will be

²American Bar Association, Center for Professional Responsibility, Standing Committee on Client Protection, State by State Caretaker Rules When Lawyer Disappears, Dies, or is Declared Incompetent, July 23, 2013.

unopened and deadlines will be missed for significant amounts of time after the death or disability of a lawyer. As these issues become more prevalent, states are recommending that attorneys implement succession plans to be in compliance with their Rules of Professional Conduct or taking this a step further and requiring the designation of a successor attorney or identification of the existence of a succession plan on attorney registration forms. But what is also indicative of the fact that attorney regulators around the country are concerned about these issues is that a majority of the jurisdictions now strongly recommend that attorneys have succession plans and offer informative materials on the subject for their members.

You worked hard to build your practice and we can only strongly encourage [by this we really mean **implore**] you that the preparation and implementation of a succession plan for your law practice is the right thing to do.

Note: This guide refers to two categories of lawyers: (1) the lawyer whose disability, incapacity, retirement or death necessitates action is referred to as the “Affected Attorney;” (2) the lawyer called upon to respond to the disability, incapacity, retirement or death of another attorney is referred to as the “Assisting Attorney.”

Thinking About and Implementing Your Succession Plan

- Step 1: You must locate and designate one or more attorneys (Assisting Attorney[s]) to manage or close your practice in the event of your disability, incapacity, retirement or death.
- Step 2: Consider if you want to have a simple or a detailed succession plan. Prepare the necessary documents to implement your succession plan. See Forms A and B.
- Step 3: Prepare written instructions to your family, your designated Assisting Attorney, your nominated executor, and your office staff including, but not limited to, the following information:
- general information and instructions
 - HIPAA authorizations to release medical information, if necessary
 - specific and detailed information and authorization to close your law practice, i.e, computer passwords, locations of keys to office, filing cabinets and storage, bank account information – Do not forget to keep this information up to date! See Form E.
 - think of this part as the preparation of “an advance directive”
- Step 4: Discuss your succession plan with the appropriate people so they know what you have been planning.

You've found your Assisting Attorney, Now What? – The Big Issues

So, you've made it through the first big step. You have designated an assisting attorney to grapple with and close your practice should something happen to you. You now have to get down to business and draw up the paperwork.

But first . . . Did you discuss making the arrangement reciprocal with the other attorney? Maybe you could help that attorney out, too.

Scope of Duty

You and your assisting attorney need to clarify the scope of the assisting attorney's duty to you and your clients. Is the assisting attorney going to act as your attorney during the closure of your practice or not? Different duties accompany either role. If the assisting attorney is not going to act as your attorney, then the assisting attorney owes a fiduciary duty to your clients, not to you. However, we recommend that you not have the assisting attorney "represent" your clients. Rule 7.3 of the West Virginia Rules of Professional Conduct prohibit in-person or telephone contact with prospective clients with whom the lawyer has no family or prior professional relationship when a motive for doing so is the lawyer's pecuniary gain. The Lawyer Disciplinary Board suggests that focus of the assisting attorney's scope of duty should be to wind down and close the affected attorney's law practice, not the representation of the affected attorney's clients.

Trust Account/General Office Account/IOLTA Account

While the idea of providing access to your trust account and IOLTA account may make you cringe, your trust account must be addressed in your succession plan. But if you want the assisting attorney to handle your office's financial affairs, then access to your office's bank accounts is crucial. A written agreement with another attorney to provide access may not be sufficient and you may need to draw up a Power of Attorney. Questions to think about are what sort of Power of Attorney do you want to grant to the assisting attorney and how and when will the Power of Attorney be triggered. Will the Power of Attorney be triggered by a specific event, who will determine that the triggering event has occurred, what powers will be granted, and what will determine the duration. Some jurisdictions have suggested that you designate a third person to hold a power of attorney that is limited to your trust account. The third person would be instructed to release authority to the named

agent or attorney-in-fact (the assisting attorney) only upon your written instructions or upon a determination of disability, impairment or death. You should also contact your bank to see what documents they would require and to complete any necessary paperwork.

Remember . . . If you have not dealt with your bank accounts in your succession plan, it could be necessary to initiate a court proceeding to access your law office's bank accounts.

Please review Rule 1.15 and State Bar Rule 10.

Client Notification

If you want to, you can provide client notification of your succession plan in your retainer agreement. Your client's signature on the retainer agreement or fee agreement can serve as written authorization for the assisting attorney to proceed on the client's behalf and allows for disclosure of the client's information to the assisting attorney in the event the assisting attorney is required to act due to your disability or death. See also Forms C and D.

Confidentiality and Conflicts

Clients must be given an opportunity to give their consent to have their confidential information shared or viewed by the assisting attorney. If called upon to implement the succession plan and prior to going through the affected attorney's client files for return or transfer, the assisting attorney should also conduct a conflicts check. See Forms C and D.

Office Organization

Now, it's time to get your office organized. Some general considerations: (1) does your office procedures manual include directions on how to access your client list and their contact information or do you even have an office procedures manual, if not, then draw one up; (2) are your client files up to date and well documented; (3) do you have written fee and/or retainer agreements for each client matter; (4) do you have a current list of clients, computer passwords and bank accounts with account numbers; (5) are your time and billing records current; (6) is your calendar current with all deadlines and follow-up dates; (7) are your open and closed client files clearly and currently designated and stored; and (8) have you considered what to do with your closed client files!!!!

More discussion about Client Files

The proper maintenance and handling of client files is an integral part of ethically maintaining your practice within the parameters of your duties under the Rules of Professional Conduct. Client files always pose a special problem for family members when a lawyer's practice must be closed. You do not want to overburden your family by having kept more than you need over the years. Don't leave this task for your family. Now is the time for you to examine your file retention policy, if you have one and if you do not, then come up with one, and take action about your closed client files. There are resources from the Office of Disciplinary Counsel to give you guidance about your closed client files. You can also contact your professional liability insurance carrier for input, as well. The Lawyer Disciplinary Board has published LEI 02-01, Retention and Destruction of Closed Client Files, which provides that you must keep client files for at least a minimum of five (5) years with certain exceptions, such as files pertaining to minors among others. However, you must remember that client files are also considered to be the property of your clients, not you. See, LEI 89-02 and LEI 92-02. Some original documents which you may have in your closed client files cannot be destroyed, such as deeds and wills and original materials provided to you by your clients. It is recommended that you should not retain these types of documents and materials. You can find additional information on ODC's website, www.wvodc.org, or you can contact ODC for informal advice.

Closing a Law Practice

Whether you are closing your own law practice or that of another attorney, be prepared for it is a lengthy process and a lot of hard work. But there are resources available. The Office of Disciplinary Counsel has prepared a work sheet containing Guidelines for Closing a Law Practice and a Handbook for Court Appointed Trustees with accompanying forms which are available on ODC's website, www.wvodc.org. Moreover, many other state bars, including Oregon, New York and Virginia have produced excellent materials on succession planning and closing a law practice. We encourage you to explore the internet. You may just find that there is more useful information out there to assist you in this endeavor.

The forms and worksheets provided here are for informational purposes and are not meant to cover every contingency the may come up when either closing your own practice or that of another lawyer. Please feel free to modify them to suit your law practice.

AGREEMENT TO CLOSE LAW PRACTICE – FULL FORM
(Sample - Modify as appropriate)

The sample *Agreement to Close Law Practice – Full Form* provided on the next page gives the Assisting Attorney the power to determine if you are disabled, impaired or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your bank accounts (including your trust account) and to close your law practice. The agreement also enumerates powers such as termination, payment for services and resolution of disputes.

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

These forms are intended to be informational and you should modify the forms as you see fit.

AGREEMENT TO CLOSE LAW PRACTICE

Between _____, hereinafter referred to as “Affected Attorney,” and _____, hereinafter referred to as “Assisting Attorney.”

1. Purpose.

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

2. Parties.

The term *Assisting Attorney* refers to the attorney designated in the caption above or the Assisting Attorney’s alternate. The term *Affected Attorney* refers to the attorney designated in the caption above and the Affected Attorney’s representatives, heirs or assigns.

3. Establishing Death, Disability, Impairment or Incapacity.

In determining whether Affected Attorney is dead, disabled, impaired or incapacitated, Assisting Attorney may act upon such evidence as Assisting Attorney shall deem reasonably reliable, including, but not limited to, communications with Affected Attorney’s family members, representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Similar evidence or medical opinions may be relied upon to establish that Affected Attorney’s disability, impairment or incapacity has terminated. Assisting Attorney is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement.

4. Consent to Close Practice.

Affected Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Affected Attorney’s legal practice in the event that Affected Attorney is unable to continue in the private practice of law and Affected Attorney is unable to close Affected Attorney’s own practice due to death, disability, impairment or incapacity. Affected Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as Affected Attorney could do personally if Affected Attorney were able. It is Affected Attorney’s specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Affected Attorney’s death, disability, impairment or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Affected Attorney’s death, disability, impairment or incapacity, but instead the appointment shall fully survive such death, disability, impairment or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Affected Attorney’s death, disability, impairment or incapacity, Affected Attorney designates Assisting Attorney as signator, or in substitution of Affected Attorney’s signature, on all of Affected Attorney’s law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts and trust accounts.

Affected Attorney's consent includes but is not limited to:

- Entering Affected Attorney's office and using Affected Attorney's equipment and supplies as needed to close Affected Attorney's practice;
- Opening Affected Attorney's mail and processing it;
- Taking possession and control of all property comprising Affected Attorney's law office, including client files and records;
- Examining files and records of Affected Attorney's law practice and obtaining information as to any pending matters that may require attention;
- Notifying clients, potential clients and others who appear to be clients, that Affected Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying Affected Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the clients;
- Filing notices, motions and pleadings on behalf of clients where the clients' interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected, and informing them that Affected Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Affected Attorney's practice, including providing Affected Attorney's clients with a final accounting and statement for services rendered by Assisting Attorney, return of client funds, collection of fees on Affected Attorney's behalf or on behalf of Affected Attorney's estate, payment of business expenses and closure of business accounts when appropriate;

- Advertising Affected Attorney's law practice or any of its assets to find a buyer for the practice; and
- Arranging for an appraisal of Affected Attorney's practice for the purpose of selling Affected Attorney's practice.

Affected Attorney's bank or financial institution may rely on the authorizations in the Agreement unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

5. Payment for Services.

Affected Attorney, on my own behalf or through my personal representative and/or heirs, agrees to pay Assisting Attorney a reasonable sum for services rendered by Assisting Attorney while closing the law practice of Affected Attorney. Assisting Attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney agrees to provide the services specified herein as an independent contractor.

6. Preserving Attorney-Client Privilege.

Assisting Attorney agrees to preserve confidences and secrets of Affected Attorney's clients and their attorney-client privilege and shall only make disclosures of information "impliedly authorized" to carry out the purpose of this Agreement.

7. Assisting Attorney is Attorney for Affected Attorney

(delete one of the following paragraphs as appropriate)

Assisting Attorney is the attorney for Affected Attorney. Assisting Attorney will protect the attorney-client relationship and follow the West Virginia Rules of Professional Conduct. **(Optional:** Assisting Attorney has permission to inform the **Professional Liability Fund** of errors or potential errors of Affected Attorney, may inform Affected Attorney's former clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Affected Attorney's former clients of any ethics violations committed by Affected Attorney.)

- OR -

Assisting Attorney is Not Attorney for Affected Attorney

Assisting Attorney is not the attorney for the Affected Attorney. **(Optional:** Assisting Attorney has permission to inform **the Professional Liability Fund** of errors or potential errors of Affected Attorney, may inform Affected Attorney's former clients of any errors or potential errors and inform them to obtain independent legal advice. Assisting Attorney also has permission to inform Affected Attorney's former clients of any ethics violations committed by Affected Attorney.)

8. Providing Legal Services.

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

9. Informing the Office of Disciplinary Counsel.

Assisting Attorney agrees to inform the Office of Disciplinary Counsel where Affected Attorney's closed files will be stored and the name, address and phone number of the contact person for retrieving those files.

10. Providing Clients with Accounting.

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

11. Assisting Attorney Alternate

(delete one of the following paragraphs as appropriate)

If Assisting Attorney is unable or unwilling to act on behalf of Affected Attorney, Affected Attorney appoints as Assisting Attorney's Alternate, hereinafter known as Assisting Attorney's Alternate. Assisting Attorney's Alternate is authorized to act on behalf of Affected Attorney pursuant to this Agreement. Assisting Attorney's Alternate shall comply with the terms of this Agreement. Assisting Attorney's Alternate consents to this appointment, as shown by the signature of the Assisting Attorney's Alternate on this Agreement.

- OR -

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

12. Indemnification.

Affected Attorney and/or personal representative agrees to indemnify Assisting Attorney against any claims, loss or damage arising out of any act or omission by Assisting Attorney under this agreement, provided the actions or omissions of Assisting Attorney were made in good faith, were made in a matter reasonably believed to be Affected Attorney's best interest and occurred while Assisting Attorney was assisting Affected Attorney with the closure of Affected Attorney's office. This indemnification agreement does not extend to any acts, errors or omissions of Assisting Attorney while rendering or failing to render professional services in Assisting Attorney's capacity as attorney for the former clients of Affected Attorney.

13. Option to Purchase Practice
(Optional)

In the event of incapacitation or death of the Affected Attorney, Assisting Attorney shall have the first option to purchase the practice of Affected Attorney under the terms, conditions and price specified by Affected Attorney or Affected Attorney's representative consistent with the provisions specified in Rules 1.17 and 5.4(a)(3) of the West Virginia Rules of Professional Conduct and other applicable law.

14. Arranging to Sell Practice.
(Optional)

If Assisting Attorney opts not to purchase Affected Attorney's practice, Assisting Attorney will make all reasonable efforts, in consultation with the Affected Attorney's personal representative and/or heirs, to sell Affected Attorney's practice and will pay Affected Attorney or Affected Attorney's estate all monies received.

15. Termination.

This Agreement shall terminate upon: (1) delivery of written notice of termination by Affected Attorney to Assisting Attorney during any time that Affected Attorney is not under disability, impairment or incapacity as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Affected Attorney's representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Assisting Attorney to Affected Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney pursuant to this Agreement. If Assisting Attorney or Assisting Attorney's Alternate for any reason terminates this Agreement or is terminated, Assisting Attorney or Assisting Attorney's Alternate acting on his or her behalf shall (1) provide a full and accurate accounting of financial activities undertaken on Affected Attorney's behalf within 30 days of termination or resignation and (2) provide Affected Attorney with Affected Attorney's files, records and funds.

[Affected Attorney]

[Date]

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

This instrument was acknowledged before me on _____ by
(date)

(name(s) of person(s))

My commission expires: _____
(date)

NOTARY PUBLIC

[Assisting Attorney]

[Date]

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

This instrument was acknowledged before me on _____ by
(date)

(name(s) of person(s))

My commission expires: _____
(date)

NOTARY PUBLIC

CONSENT TO CLOSE OFFICE – SHORT FORM
(Sample - Modify as appropriate)

The sample *Consent to Close Office – Short Form* provided on the next page includes authorization to sign on your bank accounts (trust and general) and to close your law practice. It does not include a provision for payment to the Assisting Attorney, a description of termination powers, consent to represent the Affected Attorney’s clients or other provisions included in the sample *Agreement to Close Law Practice – Full Form*.

CONSENT TO CLOSE OFFICE

This Consent to Close Office (hereinafter “this Consent”) is entered into between _____, hereinafter referred to as “Affected Attorney,” and _____, hereinafter referred to as “Assisting Attorney,” and _____, hereinafter referred to as “Authorized Signer.”

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

- Entering my office and using my equipment and supplies, as needed, to close my practice;
- Opening and processing my mail;
- Taking possession and control of all property comprising my law office, including client files and records;
- Examining client files and records of my law practice and obtaining information about pending matters that may require attention;
- Notifying clients, potential clients and others who appear to be clients that I have given the authorization and that it is in their best interest to obtain other legal counsel;
- Copying my files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by my clients;
- Filing notices, motions and pleadings on behalf of my clients when their interest must be immediately and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;
- Winding down the business affairs of my practice, including paying business expenses and collecting fees;
- Informing the Office of Disciplinary Counsel where closed files will be stored and the name, address and phone number of the contact person for retrieving the files; and
- Contacting the Professional Liability Insurance Carrier concerning claims and potential claims.

I authorize (*insert name of Authorized Signer*), Authorized Signer, to sign checks on my trust accounts and provide an accounting to my clients of funds in trust.

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

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

Assisting Attorney and Authorized Signer agree to reserve client confidences and secrets and the attorney-client privilege of my clients and to make disclosure only if the disclosures are impliedly authorized to carry out the purpose of this Consent. Assisting Attorney and Authorized Signer are appointed as my agents for purposes of preserving my clients' confidences and secrets, the attorney-client privilege and the work product privilege. This authorization does not waive any attorney-client privilege.

(Delete one of the following paragraphs as appropriate)

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

OR

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

Authorized Signer is not my attorney. Authorized Signer may inform my clients of any misappropriations in my trust account and instruct them to obtain independent legal advice or contact The West Virginia State Bar Lawyers Fund for Client Protection.

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

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

I agree to indemnify Assisting Attorney and Authorized Signer against any claims, loss or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Consent, provided the actions or omissions of Assisting Attorney and Authorized Signer were in good faith and in a manner reasonably believed to be in my best interest.

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

[Affected Attorney]

[Date]

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

This instrument was acknowledged before me on _____ by
(date)

(name(s) of person(s))

My commission expires: _____
(date)

NOTARY PUBLIC

[Assisting Attorney]

[Date]

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

This instrument was acknowledged before me on _____ by
(date)

(name(s) of person(s))

My commission expires: _____
(date)

NOTARY PUBLIC

[Authorized Signer]

[Date]

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

This instrument was acknowledged before me on _____ by
(date)

(name(s) of person(s))

My commission expires: _____
(date)

NOTARY PUBLIC

SAMPLE LETTER ADVISING THAT LAWYER IS CLOSING OFFICE

[Modify as Appropriate]

Re: *[Name of Case]*

Dear *[Name]*:

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

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. Also, The West Virginia State Bar provides a lawyer referral service that can be reached at www.wvlawyerreferral.org.

When you select your new attorney, please provide me with written authority to transfer your file. If you prefer, you may come to our office and pick up a copy of your file to deliver to that attorney yourself. Please let me know the name of your new attorney or pick up a copy of your file by *[date]*.

It is imperative that you obtain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved. *[Insert appropriate language regarding time limitations or other critical time lines that client be aware of]*.

I *[or name of attorney who will store files]* will continue to store my copy of your closed files for *[insert #]* years. After that time, I *[or name of other attorney if relevant]* will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure.

Within the next *[insert #]* weeks I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

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

[Name]
[Address]
[Phone]

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

Sincerely,

[Attorney]
[Firm]

**SAMPLE LETTER ADVISING THAT LAWYER IS
UNABLE TO CONTINUE IN PRACTICE**

[Modify as appropriate]

Re: *[Name of Case]*

Dear *[Name of Client]*:

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

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

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

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

[Name]

[Address]

[Phone]

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

[Name]

[Address]

[Phone]

You will receive a final accounting from *[Affected Attorney]* in a few weeks. This will conclude any outstanding balances that you may owe to *[Affected Attorney]* or an accounting of any funds in the client trust account.

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

Sincerely,

[Assisting Attorney]
[Firm Name]

Enclosure

ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of *[Firm/Attorney Name]*.

I acknowledge that the law office of *[Firm/Attorney Name]* has not retained a copy of the file.

[Client]

[Date]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

[Client]

[Date]

REQUEST FOR FILE

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

[Client]

[Date]

LAW OFFICE LIST OF CONTACTS

ATTORNEY _____ SSN _____

WV State Bar # _____ FEIN _____ State Tax ID # _____

Date of Birth _____

Office Address _____

Office Phone _____

Home Address _____

Home Phone _____

Cell Phone _____

Fax _____

Email Address _____

SPOUSE _____

Work Phone _____

Cell Phone _____

Fax _____

Email Address _____

Employer _____

OFFICE MANAGER _____

Home Address _____

Home Phone _____

Cell Phone _____

Fax _____

Email Address _____

COMPUTER AND TELEPHONE PASSWORDS

(identification of person who knows passwords and location where passwords are stored, such as safe deposit box, etc)

Name _____

Home Address _____

Home Phone _____

Cell Phone _____

Fax _____

Email address _____

POST OFFICE OR OTHER MAIL SERVICE BOX

Location _____

Box Number _____

Obtain Key From _____

Address _____

Phone _____

Other Signatory _____

Address _____

Phone _____

SECRETARY _____

Home Address _____

Home Phone _____

Cell Phone _____

Fax _____

Email Address _____

BOOKKEEPER _____

Home Address _____

Home Phone _____

Cell Phone _____

Fax _____

Email Address _____

LANDLORD _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

Location of Office Lease _____

Lease Expiration Date _____

PERSONAL REPRESENTATIVE _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

**THE ABOVE FORMAT CAN ALSO BE USED FOR INFORMATION FOR ATTORNEY;
ACCOUNTANT; ATTORNEYS TO HELP WITH PRACTICE CLOSURE; PROCESS SERVICE
COMPANY; OFFICE-SHARER OR OF COUNSEL; CONTACT FOR LOCATION OF WILL
AND/OR TRUST; PROCESS SERVICE COMPANY; OTHER IMPORTANT CONTACTS**

PROFESSIONAL CORPORATION(S) _____

Date Incorporated _____

Location of Corporate Minute Book _____

Location of Corporate Stock Certificate _____

Location of Corporate Tax Returns _____

Fiscal Year-End Date _____

Corporate Attorney _____

OFFICE PROPERTY/LIABILITY COVERAGE

Insurer _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

Policy No. _____

Contact Person _____

USE THE SAME FORM AS ABOVE FOR GENERAL LIABILITY COVERAGE; LEGAL MALPRACTICE – PRIMARY COVERAGE; LEGAL MALPRACTICE – EXCESS COVERAGE; VALUABLE PAPERS COVERAGE; OFFICE OVERHEAD/DISABILITY INSURANCE; HEALTH INSURANCE; DISABILITY INSURANCE; RETIREMENT FUND; LIFE INSURANCE; WORKERS’ COMPENSATION INSURANCE

STORAGE LOCKER COMPANY

Name _____

Address _____ Locker # _____

Phone _____

Fax _____

Obtain Key From _____

Address _____

Phone _____

Cell Phone _____

Email Address _____

Items Stored _____

SAFE DEPOSIT BOX

Institution _____ Box # _____

Address _____

Phone _____

Fax _____

Obtain Key From _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

Other Signatory _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

Items Stored _____

LEASED ITEMS

Name of Item _____

Lessor _____

Address _____

Phone _____

Fax _____

Expiration Date _____

LAWYER IOLTA TRUST ACCOUNT

Financial Institution _____

Address _____

Phone _____

Fax _____

Account Number _____

Other Signatory _____

Contact Information _____

INDIVIDUAL CLIENT TRUST ACCOUNT

Financial Institution _____

Name of Client _____

Address _____

Phone _____

Cell Phone _____

Other Signatory _____

Contact Information _____

GENERAL OPERATING ACCOUNT

Financial Institution _____

Address _____

Phone _____

Fax _____

Account Number _____

Other Signatory _____

Contact Information _____

BUSINESS CREDIT CARD

Name _____

Address _____

Phone _____

Fax _____

Account Number _____

Other Signatory _____

Contact Information _____

MAINTENANCE CONTRACTS

Item Covered _____

Vendor & Contact Information _____

Phone _____

Fax _____

Expiration Date _____

ALSO ADMITTED TO PRACTICE IN _____

Bar Address _____

Phone _____

Bar ID Number _____

PROFESSIONAL MEMBERSHIP ORGANIZATION _____

Address _____

Phone _____

Fax _____

Email Address _____

Member Number _____

OTHER CONTACT INFORMATION

Name _____

Address _____

Phone _____

Cell Phone _____

Fax _____

Email Address _____

Reason to Contact _____