



**WSSFC 2022**

**Practice Management Track –  
Session 5**

**Death & Disability**

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## About the Presenters...

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# AFTER ALL, YOU ARE ONLY HUMAN: THE SOLO PRACTITIONER'S HANDBOOK FOR DISABILITY AND DEATH

Issued by

The Solo and Small Firm-General Practice Section of the State Bar of Wisconsin

September 2022

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**Special thank you to the following contributors and reference materials:**

*Being Prepared; A Lawyer's Guide for Dealing with Disability or Unexpected Events, Cohen & Cohen, 2008*

*Closing a Law Office: New Mexico Guide for a Third Party Closer, State Bar of New Mexico, 2002*

*Planning Ahead Establish and Advance Exit Plan to Protect Your Clients' Interest in the Event of Your Disability, Retirement or Death, The New York State Bar Association's Committee on Law Practice Community, 2005*

**PLANNING AHEAD: A GUIDE TO PROTECTING YOUR CLIENTS' INTERESTS IN THE EVENT OF YOUR DISABILITY OR DEATH A Handbook and Forms Oregon State bar Professional Liability Fund**

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**Wisconsin Lawyers Mutual Insurance Company –Tom Watson**

## WHY THIS BOOK...AFTER ALL, YOU ARE ONLY HUMAN.

According to the 2008 Member Satisfaction Survey conducted by the State Bar of Wisconsin, 25% of attorneys are solo practitioners. 28% work in firms of five lawyers or less. 20% are employed by firms of six to fifteen lawyers. That totals 73% of the State Bar working in small firms! Many of those who consider themselves as part of “firms” are actual sharing space and in reality are solo practitioners with their own clients, trust accounts, and responsibilities. The Solo-Small Firm & General Practice Section of the State Bar of Wisconsin is providing this resource in order to respond to the needs of Bar members. During brainstorming sessions and conversations about issues facing Bar members, it became apparent that solo and small firm attorneys are desperately in need of guidance about handling death, disability and personal emergencies. Anecdotal stories:

- The widow of a deceased attorney placed an advertisement in the classified section of the local newspaper telling her late husband’s clients to come get their stuff by a certain date. Those files and materials left behind after the deadline were shredded.
- Attorney who works just blocks away from the closed office of a deceased attorney has to deal with deceased-attorney’s clients as walk-ins. For months after the attorney died, former clients of the deceased attorney stopped by to get their file, find out what is happening in their case, collect their unspent retainer, etc. Of course the attorney could not help the individuals.
- An attorney passed away in his office and all his files were placed in a storage facility. Any client who wanted access to their file had to jump through hoops just to move on to a new attorney. This included contacting the attorney’s widow, in some cases getting court approval to view the file, and having the Estate’s attorney supervise as any client attempted to view or collect their file.

These are just a few stories that many of us are very familiar with. Think about it for a moment. If you were hit by a car on the way home and could not practice law for the next nine months due to a coma, what would happen to your practice? What would happen to your clients and their matters? What about your staff, rent, that hearing on Tuesday? This resource is designed to help attorneys sift through those difficult “What if...” questions. It requires that you think about your mortality and frailty. The ultimate purpose of this book is to provide resources and guidance for establishing an emergency plan that can spring into action if you should die, become disabled, or suffer an emergency that prevents you from carrying on business as usual. After all, you are only human.

## PLANNING AHEAD IS NEVER A BAD IDEA.

We give this advice to Estate Planning clients all the time. We tell it to business clients. We share it with personal injury clients. We tell our friends and family the same. Preparation is critical. Being able to predict an event is nearly impossible, but being prepared to respond to it is completely within your control. This book will provide you with tools so that you, your staff, your family, other attorneys, judges, and clients can have predictability and calm even when your personal life is in chaos. Here is the basic outline of the plan:

1. Select an outsider to help you.
2. Execute the documents that will authorize your Outsider to help you.
3. Gather the information your Outsider will need in the event of an emergency.

See, three easy steps. That is all that stands between you and peace of mind!

## SELECTING AN OUTSIDE HELPER

Comment [5] of SCR 20:1.3 Diligence provides:

*[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another*

*competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Model Rules for Lawyer Disciplinary Enforcement R. 28 (2002) (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer)*

So the first step is to select a lawyer who will be willing to step into your office and take over in case of an emergency. It may be a local attorney, or an old law school friend, but it must be an attorney. The Outsider will end up being responsible for all aspects of your firm: payroll, invoicing, handling client matters, managing finances, business operations and more. It must be someone you trust, literally, with your life. Talk to the person to see if she is comfortable serving as your Outsider and understands your wishes and desires if you could no longer practice law, either temporarily or permanently (permanent disability or death).

Once you have decided who your Outsider will be, consider making that selection in the State Bar's Succession Planning Registry. You can access this registry by logging into your attorney profile on wisbar.org. Through the registry, you can select a primary successor attorney (and a secondary successor attorney) to run or close the practice in the event of your death, disability, or incapacity. This registry allows judges, clients, family members, and others to submit an online form to the State Bar requesting the successor attorneys' name(s) in the event that it is not otherwise clear.

## EXECUTE THE DOCUMENTS

Like any person concerned with preparation, you should have a Will and other documents to manage your assets if you no longer have the capacity to do so. After all, your business is an asset. In the event of death, your Personal Representative can use your Will to navigate the probate process to handle your more traditional assets such as your car, motorcycle, clothes, or personal items. However, your law practice is a very unique asset. It is owned solely by you, and cannot be simply transferred like a piece of land to your surviving spouse or child. There is no beneficiary designation form that can be completed here. The Wisconsin Rules of Professional Conduct restrict a non-lawyer's ability to be involved in management of a law firm.

### SCR 20:5.4 Professional independence of a lawyer

- (a.) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
  - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
  - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of SCR 20:1.17, pay to the estate or other representative **of that lawyer the agreed-upon purchase price;**
  - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or **in part on a profit-sharing arrangement; and**
  - (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
- (b.) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c.) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d.) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
  - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

While this Rule allows for the sale of the practice and for a purchasing lawyer to pay the purchase price to the estate or other estate representatives, it does not provide for operation of the firm by a nonlawyer, such as a spouse.

Planning for this this eventuality is pretty straightforward. Here are some documents that will help you set forth your intent and wishes, making a difficult time easier for those you leave behind:

- Will that includes a provision governing management of your law practice after you die
- General Power of Attorney (for personal, non-law practice areas)
- Durable, Limited and Springing Power of Attorney to Manage Law Practice while you are still alive but incapacitated
- Agreement to Close Law Practice

## THE WILL PROVISION

Estate planning practitioners know the value of having a Will and reviewing it frequently. Clients are often advised that whenever someone is born, graduates, marries, divorces or dies, they ought to pull out their Will and look it over to ensure it still meets their wishes. Lawyers should follow that advice. The lawyer who dies while still practicing law places his or her heirs and beneficiaries in a very precarious and unique situation. Typically, once a person dies, the Estate takes over all assets subject to probate and the Personal Representative is responsible for administering the Estate. This includes notifying heirs and beneficiaries of the death, opening the Estate, filing the Will with the Court, inventorying the assets, making distributions, completing any needed tax documents, and providing a final accounting to the Court and beneficiaries. When the deceased is a business owner, the business simply passes on to the family, or is liquidated. This includes sale of the business assets – equipment, inventory, contracts, etc. Once sold, the Estate's heirs simply divide the sale proceeds. Alternatively, some solely owned businesses will have a buy/sell agreement in place that activates a sale of the business upon the owner's death. But a law practice is different from your typical solely owned flower shop, auto repair garage, service or other business.

The problem is that a spouse Personal Representative should not be involved in managing, operating, or selling a law practice. It is true that "...a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration." SCR 20:5.4(d)(1). The rule only permits the non-lawyer to hold stock after the lawyer's death, not manage the practice or actually practice law. Only a lawyer may sell or purchase a law practice. SCR 20:1.17. Comment [13] to SCR 20:1.17 provides some guidance, stating:

This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met." Comment [13] to SCR 20:1.17.

While a non-lawyer Personal Representative can sell the practice and is not subject to the Rules of Professional Conduct, the comment makes it clear that the purchasing attorney and the attorney for the estate must comply. The best approach is to require that the Personal Representative retain an attorney for the sale of the practice. If the estate does not have an attorney, the Rule places all client-notice requirements and other mandates of the rule on the purchasing attorney. However, the rule seems to conflict with the traditional notion of "client choice." Historically, and under ethics opinions such as Wisconsin Formal Ethics Opinion E-97-2 and ABA Formal Opinion 99-414, it is the client who decides whether to keep their file with the firm or office or transfer it to another attorney or firm of their choice. In other words, the client gets to choose who his or her attorney will be. This is true whether the attorney comes from a solo practice or a large firm with hundreds of attorneys. Even though the rule permits the surviving spouse to sell a



practice and let the buying lawyer notify the clients, the best practice is to engage a trusted attorney (the Outsider) to contact the clients before any sale. Consider the situation from the purchasing attorney's point of view: Would you buy a practice if you had no assurance that any of the client matters you purchase are going to actually remain with you? It would be so much easier to avoid these issues by having an attorney prepared to step in, manage the sale for the Estate, and do so within the Rules of Professional Conduct.

A lawyer's estate planning should include talking to attorneys to identify someone who is willing to assist the Estate and Personal Representative with the sale of the practice. The Rules do permit some leniency in allowing a non-attorney to wind up and sell the practice, but doing so is not advised here. In order for a non-attorney to wind up your practice, he or she will have access to some very sensitive and confidential client information. Do you think your clients would be comfortable with your spouse or children digging through their files?

The best practice is to arrange for an Outsider to step in and help the Estate. Add a clause to your Will that retains the practice as an Estate asset but directs the Personal Representative to engage a specifically named attorney to either 1) sell the practice to a pre-determined attorney; or, 2) manage the practice until it can be wound-up or sold. Remember that a client must consent to someone other than the attorney they employed continuing their representation. This plan is fairly straightforward and allows the transition of the practice to be accomplished within probate timelines and deadlines. Alert your Personal Representative that having the Estate employ an attorney to assist with this process may complicate the accounting process for the Estate due to the need to pay for these services. While the Practice is an income-earning asset of the Estate, clients cannot be billed for tasks necessary to comply with both SCR 20:1.16 and SCR 20:1.17.

A sample Will Provision is attached as Form 1.

## THE GENERAL DURABLE POWER OF ATTORNEY

Estate planning attorneys have been advising clients about the pros and cons of Powers of Attorney for decades. The document permits a person to administer your assets. The most common form is simply a Durable Power of Attorney that may be effective immediately and permits the Attorney to manage the affairs of the person signing the document (the Principal). Principals should choose their Attorney carefully. Many have heard the horror stories of Powers of Attorney gone rogue. Consider the elderly gentleman who named his daughter as his Attorney only to find out six months later that she took a mortgage against his house, never made a payment, and that his home was facing foreclosure. If you, as a practicing attorney have a general Durable Power of Attorney in effect, be certain to limit the powers appropriately. **Your general Power of Attorney should NOT include the power to manage your law practice. Your general power of attorney should only have powers over your personal matters, not your professional ones. The Durable, Limited and Springing Power of Attorney Power addresses management of your firm.**

The legislature approves statutory Durable Powers of Attorney which are available from the Wisconsin Department of Health Services. This form may be adequate, or you may want to modify and customize it. Additionally, remember that even if using the statutory form, **you will want to include specific instructions that the Attorney in Fact does not have power or authority over your law practice and that you have created a separate document governing control of your law practice in the event of your disability or death.** Sample language for excluding your law practice is included in the attached Form 2.

## THE DURABLE, LIMITED, AND SPRINGING POWER OF ATTORNEY

Your law practice is a very unique asset. You have ethical rules and responsibilities for how you manage and conduct your business. Due to rules governing confidentiality, loyalty, and conflicts of interest, you should only permit an outsider access to your practice in an emergency. Your practice should be governed by a Durable, Limited, and Springing Power of Attorney. A sample of such a Power of Attorney is attached as Form 3. This document names an attorney to manage your practice if you should become disabled, incapacitated or are missing. Form 3 uses the language of Wis.Stat. §244.02(7) to determine whether you are “incapacitated.” Form 3 illustrates the various powers you may give your Attorney as well as ones you may limit and refuse to grant.

## THE FEE AGREEMENT – TIPS FOR DEALING WITH BRIEF ILLNESS OR INCAPACITY

While long term disability, incapacity or death are often hard to face, every attorney will at some time face the issue of being out of the office due to an illness or surgery. For those instances, you may wish to consider adding language to your representation agreement that allows you to have other attorneys cover for you in these circumstances to which the client approves in advance. Sample language may be found at Form 4.

## THE ONE LEFT BEHIND – TIPS FOR MANAGING OR SELLING ANOTHER ATTORNEY’S PRACTICE

### INVOLVING THE COURTS WHEN A SOLE PRACTITIONER DIES OR BECOMES DISABLED.

In addition to managing the practice, the appointed Attorney may need or should navigate the Court process of becoming the “Trustee” of the practice pursuant to SCR 12. The process is available for attorneys who are medically incapacitated, dead, or missing. The rule is currently written as discretionary: “...any interested person or person licensed to practice law in this state *may* file a petition...” SCR 12.03(a) emphasis added. Appointment as the Trustee attorney under Chapter 12 provides clear authority pursuant to Court order, but does place certain limitations and restrictions on the actions of the Trustee attorney that may limit or conflict with the powers granted under a Durable, Limited, and Springing Power of Attorney discussed in the preceding section. However, by being appointed as Trustee, the new Attorney has specific powers under the rules as evidenced by a Court order. Appointment as Trustee prohibits the Attorney who is managing the practice from serving in any other capacity with the Estate of a deceased attorney. SCR 12.03(c)1 includes a prohibition against acting as a successor attorney until the Trustee becomes a purchaser of the practice as provided by SCR 20:1.17. If the solo practitioner has active cases in more than one county, the process does not need to be repeated in each county. Once the Order for Appointment is issued, it should be recognized by other judges.

### A CHECKLIST FOR THE OUTSIDER

Below is a “to-do” list for the Outsider or Attorney-in-Fact who manages your practice when you no longer can. The list is not a complete and exhaustive list but should serve as a reminder of the duties and responsibilities of an Outsider or Attorney-in-Fact. *As the planning attorney, you should read this list.* Reviewing the list will provide you with

insight into the information that you must have organized and available to staff and/or the Outsider or Attorney-in-Fact. If you expect your representative to contact insurance companies and activate your disability policy, you must have the name of the company, policy number, and claim information organized and easily locatable. Keeping a brightly-colored binder with all of this information in your office may be a good idea. If you have concerns about security, stick it in a fireproof safe and share only the combination with your Personal Representative/Outsider/Attorney-in-Fact. Fill it with all critical and sensitive information: bank accounts, insurance policies, lease information, software passwords, etc. Most importantly, remember to update your binder. Set one day, every year, on your calendar to pull out the binder and update the information

1. THE OUTSIDER MUST NOTIFY THE COURTS, ATTORNEYS, CLIENTS, INSURANCE CARRIERS AND OTHERS

- **Courts.** Should be done in writing, personally to each judge in the counties where the attorney may have active cases. Here is where the attorney's office staff can be exceptionally helpful. They can compile the list of judges who need to be notified and in addition to the written letters, the staff can make personal phone calls to each judge's office informing them that the attorney is disabled or dead and that Attorney X will be handling the office matters. This way, the Courts are not entirely surprised when Attorney X's letter arrives in the mail. Notice should first be informal, maybe just a letter with a promise that a Petition and Order pursuant to SCR 12 will be following.
- **Attorneys.** In small towns, most firms or attorneys will hear about the disability or death of a colleague rather quickly. However, staff can again be helpful with providing written and telephone communications informing them that the situation is under control of Attorney X. When contacting attorneys you should also be seeking stays, continuances or stipulations for extensions on deadlines, appearances, etc. Staff can help with confirming these arrangements in writing.
- **Clients.** There is a chance that clients will hear of an attorney's accident or death and start calling the office. Staff, or answering services, should be prepared to provide them an accurate explanation. "Yes, the Attorney is temporarily disabled (or dead) and we are unable to provide any more details at this time. However, the Attorney had previously made arrangements with Attorney X to manage his practice in the event of an emergency. Attorney X is already taking on that responsibility and should be getting in touch with you soon. Thank you for your concern and understanding."  
\*Sample letters for clients can be found at Forms 5 & 6.
- **IF ATTORNEY HAS DIED NOTIFY THE STATE BAR AND OFFICE OF LAWYER REGULATION.** This will cease any obligation for continuing education credits, dues payments, etc.
- **Insurance Carriers.** In the case of disability, insurers who may provide benefits to the Attorney need to be notified. If the Attorney has died, Outsider must contact malpractice carriers as well as any companies who may carry life insurance on the deceased to determine if any benefits are payable to the firm.

## 2. THE OUTSIDER MUST INVENTORY THE OFFICE, INCLUDING CLIENT FILES

**Develop or Obtain A List of Clients.** Again, staff can be invaluable with this task. Have them sort through paper files and prepare a brightly-colored worksheet that can be paper-clipped to the front of the file identifying the client's name, address, and phone number, general nature of the matter, upcoming deadlines and some notes about the status. If the files are electronic, prepare a paper form as described or create a word processing document with the information for each file on a separate page. The staff will know perfectly well which clients have refused to complete discovery responses, which ones keep changing their mind about what they want from their divorce, which ones are helpful and cooperative, and which files have difficult attorneys on the other side. This information is invaluable to the Outsider and summarizing it on one sheet can help the Outsider prioritize which files need her attention immediately.

- **Determine if the Outsider Can Continue the Representation.** In some cases, the Outsider may be able to simply step in for the disabled Attorney by appearing at a stipulated divorce hearing or real estate closing and finishing the work for the Attorney. If the Outsider wishes to do this, he or she must obtain informed consent from the client. Consider including a provision in the fee agreement or engagement letter that provides for this eventuality in advance. However, even with advanced approval, the client ultimately determines the objectives of representation. (SCR 20:1.2) and who represents them in their matter. Therefore, it is a best practice to notify the client of the disability and obtain their consent to the substitution. In other cases, the Outsider will immediately spot a conflict of interest, which prevents her from handling the matter. Those files ought to be flagged, tagged, or have a big red sheet of paper glued to front, anything so that the Outsider takes no further look inside the file. For electronic files, move the identified files to a new electronic folder called "Conflicts" if possible or at a minimum, the folder name should be changed to put the Word "CONFLICT" as the first word of the folder name. The Outsider should contact the client, explain the conflict and inform the client of the options. The client may either have their file transferred to another attorney or, with informed consent, agree to wait until the Attorney returns and stipulate to a continuance. The Outsider should carefully explain the situation to the client in writing, as well as in a face-to-face meeting. Ideally, the client should make a written decision on a form prepared by the Outsider and kept with the file. Remember that clients cannot be billed for tasks such as these that are necessary to comply with both SCR 20:1.16 and SCR 20:1.17.
- **Managing the Finances.** The Outsider is responsible not just for client files and matters but for the financial and management aspects of the practice. This includes paying bills, generating invoices to clients, and managing financial accounts. Banks and financial institutions will likely want a copy of the Power of Attorney before granting Outsider access to accounts. If Outsider identifies issues with the Client Funds Accounts such as an overdraft, they must be reported to the Office of Lawyer Regulation. While no one wants to expose a disabled or dead attorney to potential discipline, it certainly is a better course of action than risking the exposure of your own license. Keep in mind that managing the finances also includes control over things like magazine subscriptions, insurance, and professional memberships. The Outsider should also determine if the Attorney had an accountant and if so, the Outsider should contact the Accountant immediately.

- **Calendar.** Take a look at the Attorney's calendar to see if any hearings, depositions, or deadlines need to be postponed or cancelled. This may be tricky. If the Attorney kept only an electronic calendar on a laptop with a secured password, Outsider may not be able to access the information without help from some computer guru. Many of these appointments or deadlines should already be known by having staff post them on the files in the worksheet mentioned above.
- **Email Auto-response.** In a perfect world, clients would quickly learn of an attorneys' disability or death. Unfortunately, we live in the real world and it is easy to overlook someone or for them to miss the notice. Email and other communications may continue to come to the firm long after an attorney's disability or death. To avoid concerns about the ethics of exposing potential and existing client confidences, The Outsider should take steps to deal with this issue. One solution is to set up an automated reply message which bounces back to the sender. The automated reply advises the sender of the disability or death of the Attorney and instructs the Sender to contact the Outsider but with minimal information as set forth in the autoresponse. This solution preserves client confidences. The automated reply should be accompanied by a filter or email rule which deletes incoming email messages for the disabled or deceased Attorney after the auto reply has been sent. This will prevent incoming messages from being opened, saved, or forwarded. A sample Automated Reply is included as Form 7.

### 3. CLOSING THE PRACTICE

- **Inventory and Value What Can Be Sold.** In the ideal world, the Outsider will have a purchase price in mind and the whole practice just gets sold. The surviving family is happy. The clients are happy. The lawyers and courts are happy. In reality, the sale process is much more complicated. If the Outsider is not going to be taking over the practice, he or she needs to find another attorney or multiple attorneys who will. So how does one "value" a law firm? Outsider should consult with an accountant or financial professional to review the accounts receivable and payable, cash flow, economic trends of the practice and consider good will too after obtaining written confidentiality acknowledgments from these professionals. There is no magic formula for valuing a law practice and each Outsider will need to work with the Estate of the deceased Attorney, the surviving family and clients to determine valuation. Some files may simply transfer with the agreement that fees already earned by the Attorney will be paid to the Attorney's Estate. But some cases, for example, personal injury plaintiff cases, are worth more to the firm than just the work already performed. Some matters may be negotiated for a percentage share of any future recovery being paid to the Estate or specific heirs or beneficiaries. In all situations, client consent is again very important.
- **Arrange for Transfer of Files and Items.** The Outsider will need to create and use a system for keeping track of where client files have gone. This can be accomplished by using receipts wherein the client or their new attorney acknowledges they received the file.
- **Give Former Clients An Opportunity to Retrieve Their Stuff.** Most law offices have more than just current client files. Files that are in storage need to be offered to the clients. If the Outsider is unable to directly contact the client (because the client has moved or died) then the Outsider should try a public approach. Place advertisements in a paper letting people know that the old files of Attorney X do still exist and if they are not claimed they will be destroyed. The advertisement

should be clear that you will not be destroying *current* client files, only *former* client files. If any original wills are found they should be forwarded to the Register in Probate. They may not be the most recent wills of a former client, but the Outsider should never destroy an original Will.

- **Collect Payments, Make Final Payments, and Prepare Tax Documents.** Part of the Outsider's responsibilities is to collect fees. Another responsibility is to return any unearned advanced fees (Wisconsin no longer calls them retainers) and advanced costs paid by clients. If the representation is going to continue with a new lawyer, and the client has indicated this in writing as required, then the advanced fees and costs that remain after payment of any sums owed to the deceased attorney should be transferred along with the file to the new attorney taking over the file. These funds just like the file are the property of the client and the client controls who holds them. If the Outsider wishes to take additional precautions in regards to the advanced fees and costs, the written authorization from the client should also include a provision specifically providing for this transfer. Uncollectable fees need to be addressed by a competent tax preparer. The Outsider is entitled to be paid as well. The terms for compensation should be based upon an hourly rate or an agreed-to flat fee. Alternatively, the attorney can provide a method for calculating payment in his or her Power of Attorney or Will. Just as with any business wind-up or estate process, accounting and bookkeeping are important and there is certainly going to be tax-related documents that need to be completed.
- **Other Miscellaneous Wind-Up Work.** There are other tasks which need to be completed. If the law practice leases space, the lease may need to be cancelled. If office equipment is leased, those items will need to be returned and the contracts will need to be settled. Subscriptions to magazines, online research providers, library book updates, and others will need to be cancelled. The two final notices should be sent 1) to the Attorney's malpractice carrier informing them that the practice has been wound up and closed and securing tail coverage; 2) to the post office, informing them that any and all mail addressed to the firm should be returned to sender.

## WHAT INFORMATION WILL THE OUTSIDER NEED?

The Outsider will need to know, first and foremost, that you have chosen her to serve a very special role. The Outsider should be someone YOU choose, not just any attorney from your local town who might want to get his or her hands on your clients. When you choose your Outsider, you take the first step to ensuring a smooth transition for your family, clients, and legal peers. Unless and until something happens to you, that's all your Outsider needs to know. And since you've told the Outsider about your plan, you should feel comfortable giving him a copy of the documents you have prepared.

Once the Outsider does step in due to your death or disability, he or she will need a LOT of information. Bank account numbers and balances, client information, access to computer software, passwords, the name of the company that shreds your confidential documents every other Wednesday. The list goes on and on and on. A sample checklist and form are attached as Form 8. However, a better way to ensure that your Outsider has all the information they need may be to recreate your days, weeks and months. Just spend one day with a recorder dictating the passwords you use, bills you pay, accounts you access, etc. Creating a list of *how* you practice is probably the best way to gather the information you will need to pass on to your Outsider.

## ETHICAL RULES REGARDING INFORMED CONSENT

It is critical that the Outsider attorney who is managing another's practice abide by ethical rules regarding informed consent. SCR 20:1.2 provides that a client always has the right to choose their attorney and have input into the representation. The Outsider attorney will obviously be concerned about the status of files, court deadlines, and management of files. Yet, they cannot ignore the obligation to inform the client that the Outsider is taking over and obtain consent from the client to do so. We hope the Office of Lawyer Regulation recognizes that making minor phone calls to other attorneys and courts notifying them of the situation are immediate needs and they would avoid imposing sanctions for initial necessary work. We believe that such efforts are authorized by SCR 20:1.2 (a) which provides "...A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." However, acting on behalf of a client for an unreasonable amount of time without having the client's consent is likely inexcusable. Where is that line drawn? We can only assume it is handled on a case-by-case basis. Best practice is to notify the client as soon as possible and give them the choice to continue representation or select a new attorney. A good resource for understanding the concept of Informed Consent is the article [Conflict Waivers and the Informed Consent](#) Standard by Attorney Tim Pierce in the July 2009 edition of the Wisconsin Lawyer Dean Dietrich also wrote an article on this topic titled [Ethics: Obtaining Informed Consent](#) in September 2007.

## MALPRACTICE INSURANCE ISSUES

Malpractice coverage is not required in Wisconsin unless you are practicing as a limited liability entity as authorized by SCR 20:5.7, which requires such an entity to maintain malpractice insurance with minimum liability amounts. However, maintaining malpractice insurance is a best practice and can protect not only you but also your Estate. You should consider malpractice insurance that continues after you have ceased practice due to incapacity, retirement or death.

According to Tom Watson of Wisconsin Lawyers Mutual Insurance Company:

*The commonly used term of "tail coverage" refers to what is technically known as an "extended reporting period endorsement" (ERP). The ERP endorsement simply extends the time in which someone can make a claim. Lawyers*

who retire or leave private practice often purchase a "tail" coverage endorsement to protect their financial well-being.

The endorsement attaches to the most recent policy on which an attorney is identified as an insured. Any lawyer leaving a firm by way of retirement or simply changing jobs, should consider whether they need to purchase this type of endorsement. Many professional liability policies provide coverage as a matter of course to a "former attorney", particularly when an attorney moves on from a firm and continues to practice elsewhere. However, attorneys should determine if they need to purchase this endorsement to ensure the work they have done in the past continues to be covered by that firm's policy.

This is important because legal malpractice insurance policies are "claims-made" policies. Coverage is only provided for claims that are first made against the lawyer/law firm and reported in writing to the insurance carrier during the policy period. In order to trigger coverage, you must report a claim or potential claim to your carrier during the policy period when you first become aware of it. That means you must have a policy in place when you become aware of a claim or potential claim.

When attorneys retire they too should consider purchasing the extended reporting period endorsement. The endorsements can be purchased to provide coverage for various lengths of time. The policy language will generally discuss what different time periods can be purchased and provide an idea of what the related cost is for the endorsement. The premium generally is a calculation of the attorney's last annualized premium. The lengths of time may include 1 year, 3 years, 6 years or unlimited, for retiring attorneys. Depending on the areas of practice, an attorney may want to consider an unlimited endorsement to cover their future. For attorneys continuing to practice, the time periods generally are more limited and may only include options such as 3 years and 6 years.

Lawyers are encouraged to plan for a possible long-term absence by arranging for backup prior to their absence. This includes getting a commitment from a lawyer or lawyers to take on the disabled lawyer's pending cases during an absence. This is especially important for a solo practitioner. Most lawyers in a multiple-lawyer firm, we assume, would arrange for backup from other lawyers in the firm, unless the disabled lawyer handles an area of practice in which none of the other lawyers in the firm have experience.

The disabled lawyer should make sure the lawyer who is in place as his or her backup has their own malpractice insurance coverage. Generally, the disabled lawyer's carrier will continue to insure that lawyer as long as they have an active policy in place. However, the lawyer stepping in to pick up the pending cases should have their own policy.

If a claim were to arise from the work done by the backup lawyer, chances are the claim would be made against that lawyer, as well as the disabled lawyer (or his or her firm if it is a multiple-lawyer firm). As a result, the carrier would provide coverage for its insured lawyer (the disabled lawyer) while the backup lawyer would have to rely on his or her carrier's coverage. This could result in coverage overlap between two different carriers. But at least each lawyer would have insurance coverage. When selecting a backup lawyer to fill in due to a long-term absence, lawyers should always make sure the backup lawyer has insurance coverage.

The reasons carriers ask solo practitioners if they have a backup lawyer or lawyers in place in the event of a long-term illness are that it serves as a risk management tool to remind the lawyer to protect their work and their clients in case of a long-term absence. If the carrier's insured lawyer does this, it helps reduce the chances that backup will get overlooked and a malpractice claim would occur. When lawyers are proactive and arrange for backup in advance, it not only helps protect the lawyers and their clients, it can protect the carrier against a malpractice claim as well



# FORM 1. WILL PROVISIONS: PROVISION KEEPING THE PRACTICE IN THE ESTATE UNTIL SALE OR TRANSFER

LAST WILL AND TESTAMENT OF \_\_\_\_\_

## ARTICLE \_\_\_\_

- 1) I am currently a practicing attorney. I believe that the sale of my practice will be the best decision for my clients, employees and family. If at the time of my death I am still engaged in the practice of law, I authorize my Personal Representative, pending the administration of my estate to employ OUTSIDER, an attorney licensed to practice law in the State of Wisconsin, in order to continue my practice until such time as my Personal Representative can sell my practice. [It is my preference that the practice be sold to my associate\_\_\_\_\_, if satisfactory terms can be negotiated. OR it is my preference that my practice first be offered for sale to my colleague\_\_\_\_\_, and that if satisfactory terms can be negotiated that the sale be offered to others.]
- 2) My Personal Representative and OUTSIDER shall notify clients of a proposed sale and offer them the opportunity to have their file transferred to another attorney before the sale. The Estate shall reimburse OUTSIDER for his/her services at a reasonable hourly rate. My Personal Representative and OUTSIDER shall conduct any sale of my practice in accordance with the Wisconsin Rules of Professional Conduct and all other applicable laws. It is understood that my practice is a unique business and my Personal Representative will require some time to convert the practice into cash. I therefore direct that my Personal Representative be provided up to eighteen months from the date of appointment to convert my practice into cash and more time if, in the discretion of the court (s)he should have it.
- 3) The sale of my practice shall include all office furnishings, books, electronic equipment, and any all rights and obligations held by my practice including but not limited to, my lease(s), contract agreements with software and publishing companies, contracts with service companies. The sale of my practice shall further include all my client files, contingent upon consent from the client.
- 4) If my practice cannot be sold because no satisfactory sale agreement could be negotiated, my Personal Representative is instructed to work and cooperate with OUTSIDER to assist transferring my clients to new attorneys. My Personal Representative shall also work with OUTSIDER to liquidate the practice's assets, terminate any ongoing contractual obligations, wind up the financial aspects of my practice (invoicing, collecting receivables, returning unearned client funds), prepare final tax returns, and do all other necessary and appropriate things to close my business.
- 5) I hereby authorize and provide to my OUTSIDER, full power and authority to manage my practice after my death until sale. This authority shall include the right and power to:
  - (a) Petition a court pursuant to Wisconsin Supreme Court Rule 12.03 for appointment as Trustee of my law practice;
  - (b) Continue employment of staff to assist with closing my practice, arrange for payment of staff, and offer key staff members incentives as appropriate;
  - (c) Enter my office and utilize my equipment and supplies;
  - (d) Obtain access to my safe deposit boxes and obtain possession of items belonging to clients, and take possession and control of all assets of my law practice including client files and records;
  - (e) Open and process my mail and access all communications to and from my practice, including but not

- limited to e-mail, text messages, voicemail, my practice website, etc.;
- (f) Examine my calendar, files, and records to obtain information about pending matters that may require attention;
  - (g) Notify courts, agencies, other attorneys and other appropriate entities of my death and, with client consent, seek and obtain extensions of time;
  - (h) Notify clients and those who appear to be clients of my death, and present to the clients options for obtaining new counsel;
  - (i) Obtain clients' written consent to transfer client property and assets to other counsel
  - (j) Provide clients with their property and assets, copies of material in their files and return unearned fees, costs and deposits;
  - (k) File notices, motions, and pleadings on behalf of clients who cannot be contacted prior to immediately required action;
  - (l) Contact my malpractice carrier concerning claims or potential claims, to notify of my death, and to obtain extended reporting or "tail" coverage;
  - (m) Dispose of closed and inactive files by delivery to clients, storage, and arrange for destruction, remembering that records of my trust account are to be preserved for at least 6 years after the last client representation has terminated as required by the Wisconsin Rules of Professional Conduct. Files relating to minors should be kept for five years after the minor's eighteenth birthday;
  - (n) Send statements for unbilled services and expenses, and assist in collecting receivables;
  - (o) Pay current debts and expenses of my practice, terminate leases, and discontinue memberships, listings, subscriptions and contracts;
  - (p) 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; determine if I have held any other fiduciary duty such as trustee, personal representative, and, if so, to inform appropriate individuals of my death, resign the position on my behalf, and assist the organization, trust, estate or entity in naming a successor agent, trustee, personal representative, or fiduciary;
  - (q) Determine if I was serving as a Personal Representative or Trustee for 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;
  - (r) Rent or lease alternative space if a smaller office would serve as well as my present office;
  - (s) To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability or other insurance of my practice; to notify insurance carriers of my death, to cooperate with insurance carriers regarding matters relation to my coverage;
  - (t) To prepare, execute or file income, informational or other tax returns or forms, and to act on behalf of my law practice in dealing with the Internal Revenue Service, the Wisconsin Department of Revenue, or any other federal, state, county, municipal or local government agency or department;
  - (u) To execute any deed, contract, affidavit or other instrument necessary in order to carry out his/her responsibilities;
  - (v) To sell or otherwise arrange for disposition of my furniture, books, or other personal property located in my office; and
  - (w) To open my safety deposit box, which is located at insert bank name here, and used for my law practice, to inventory the box and to arrange for the return of property to clients.

- 6) In performing these duties my Personal Representative and OUTSIDER are instructed to preserve the confidentiality of client information and the attorney-client privilege. They are authorized to make disclosure only to the extent necessary to carry out their authorized duties. I have permitted my Personal Representative to retain my staff and OUTSIDER in order to ensure the interests of my clients are protected. My Personal Representative and OUTSIDER are to abide to the greatest extent possible with all ethical standards, including but not limited to, confidentiality, conflicts of interest, zealous representation, and informed consent. My Personal Representative and OUTSIDER shall rely, without the need for 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 advance payments 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. If I have no employees, my Attorney-in-Fact shall independently obtain all necessary information.
- 7) My Personal Representative and OUTSIDER shall be indemnified against claims of loss or damage arising out of any omissions or acts which were in good faith and reasonably believed to be in the best interest of my Estate and were not the result of gross negligence or willful misconduct. Any such indemnity shall be satisfied first from assets of my law practice including my malpractice insurance coverage.
- 8) Once my law practice has been sold I direct that all proceeds from the sale shall be distributed as follows:  
(Enter specific instructions here for distribution to certain beneficiaries, estate residue, or as desired.

## FORM 2. DURABLE POWER OF ATTORNEY

Wisconsin Statutes §244.41(3) and 244.43 provide for a Durable Power of Attorney of Property and Finances. A form is included in the statute. This form is used for general estate planning purposes. It is not appropriate for planning the management of your law practice if you should become incapacitated or disabled. Feel free to use the form to provide your spouse or children or a trusted friend the power to make decisions for you. Do not use it to grant someone power over your law practice. It simply is too general. When you complete the form ensuring that your law practice is specifically *excluded* so that a spouse or other family member may be your general power of attorney, but the law practice is governed by Form 3 which follows. The following language is a sample of what could be used in the “special instructions” section.

“I am an attorney licensed to practice law in the State of Wisconsin. This Durable Power of Attorney does NOT include any power or authority with respect to my law practice. I have made arrangements for the management of my law practice through a Durable, Springing, and Limited Power of Attorney document.”

# FORM 3. DURABLE, SPRINGING, AND LIMITED POWERS OF ATTORNEY

## DURABLE, SPRINGING, AND LIMITED POWER OF ATTORNEY FOR

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### IMPORTANT INFORMATION

THIS POWER OF ATTORNEY AUTHORIZES ANOTHER PERSON (YOUR AGENT) TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU (THE PRINCIPAL). YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF. THE MEANING OF AUTHORITY OVER SUBJECTS LISTED ON THIS FORM IS EXPLAINED IN THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN CHAPTER 244 OF THE WISCONSIN STATUTES.

THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.

YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.

IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A SUCCESSOR AGENT. YOU MAY ALSO NAME A SECOND SUCCESSOR AGENT.

THIS POWER OF ATTORNEY DOES NOT BECOME EFFECTIVE UNTIL THE OCCURRENCE OF THE SPRINGING EVENT AS STATED IN THE SPECIAL INSTRUCTIONS. THIS POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY EXECUTED PREVIOUSLY UNLESS YOU SO PROVIDE IN THE SPECIAL

## INSTRUCTIONS.

IF YOU REVOKE THIS POWER OF ATTORNEY, YOU SHOULD NOTIFY YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR LEGALLY SEPARATED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

I, \_\_\_\_\_, of the (city/village/township) of \_\_\_\_\_, \_\_\_\_\_ County, State of \_\_\_, do hereby appoint INSERT NAME OF ATTORNEY IN FACT HERE, of (City/Village/Township), (State), my agent and attorney-in-fact for me.

- 1) **LIMITED SCOPE.** This power of attorney is limited and only grants powers associated with managing and selling my practice of law.
- 2) **SPRINGING EVENT – DISABILITY AND/OR INCAPACITY.** This Power of Attorney shall only be effective upon my disability or incapacity. (*Disability or Incapacity or both may be chosen, then choose between i) and ii) below which define the terms.*)
  - a) In order to determine if I am disabled and/or incapacitated, my Attorney in Fact is entitled to access and review any and all of my health information and medical records. This authorization for access includes information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 42 U.S.C 1320d (as amended) and 45 C.F.R 160-164 (as amended). My Attorney in Fact is directed to communicate with members of my family and consult the opinions of medical professionals to determine if I am “disabled” or “incapacitated.” My Attorney in Fact is directed to further consider the opinions of individuals with whom I have maintained close relationships such as colleagues, friends, and employees. If my Attorney in Fact intends to activate this Power of Attorney (s)he shall sign an Affidavit stating the facts upon which his/her determination of my disability/incapacity are based and whether (s)he affirms that my disability/incapacity is temporary or permanent in nature.
  - i) “Disability” shall be determined by obtaining a written and notarized statement from two (2) persons licensed to practice medicine in the State of Wisconsin or in such other state as I shall be present. Each licensed medical professional must state that (s)he has examined me and determined that I am incapable of acting on my own behalf. Such disability shall be deemed to cease upon delivery of a similar written and notarized statement to my attorney-in-fact that the disability has ceased. Any third party dealing with my attorney-in-fact may rely upon a copy of any such statements as to my disability. No third

party shall be required to make an independent determination of my disability. Any third party may rely upon a statement by my attorney-in-fact that the disability has not ceased when dealing with my attorney-in-fact.

- ii) "Incapacity" shall be determined as defined in Wisconsin Statute §244.02(7) as amended from time to time and §244.09(3) as amended from time to time. Per Wis.Stat. §244.02(7) "Incapacity means inability of an individual to manage property, finances, or business affairs because the individual meets one of the following criteria:
  - (1) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
  - (2) Is missing.
  - (3) Is detained, including incarceration in a correctional facility.
  - (4) Is outside the United States and unable to return.
  - (5) Per Wis.Stat. §244.09(3), if a power of attorney becomes effective upon the principals' incapacity and the principal has not authorized a specific person to determine whether the principal is incapacitated, or the person so authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by one of the following:
    - (i) a physician licensed under ch. 448 or a psychologist licensed under ch. 455 that the principal is incapacitated within the meaning of s.244.02(7)(a).
    - (ii) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of s.244.02(7)(b)(c)or(d).
    - (iii) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative under 42 USC 1320d, the Health Insurance Portability and Accountability Act, and applicable regulations, or to obtain access to the principal's health-care information and communicate with the principal's health care provider.
- b) When any individual makes a determination that I am disabled/incapacitated, the determination shall include a statement as to whether the declarant believes my disability/incapacity is temporary or permanent. If temporary, the statement shall include information about when I shall again be evaluated for disability/incapacity. If an individual determines that my disability/incapacity is permanent, (s)he shall include a statement to that fact in his/her declaration.
- 3) **INTENT TO RETURN TO THE PRACTICE OF LAW.** I hereby inform my Attorney in Fact that in the event of my disability/incapacity, I intend to return to the practice of law. The Attorney in Fact is instructed to manage and operate my law practice in a manner that promotes and furthers its continuation until my disability/incapacity is resolved. My Attorney in Fact is hereby instructed to protect the interest of my clients as well as my practice.

4) **GRANT OF LIMITED POWERS – TEMPORARY DISABILITY OR INCAPACITY.** In the event that my disability/incapacity is temporary in nature, as determined by the individual(s) who declare me disabled/incapacitated, the Powers set forth in this Durable, Limited and Springing Power of Attorney shall be as follows:

- a) Petition a Court pursuant to Wisconsin Supreme Court Rule 12.02 for appointment as Trustee of my law practice
- b) Enter my office and utilize my equipment and supplies
- c) Obtain access to my safe deposit boxes and obtain possession of items belonging to clients take possession and control of all assets of my law practice including client files and records
- d) Open and process my mail and access all communications to and from my practice, including but not limited to e-mail, text messages, voicemail, my practice website, etc.
- e) Examine my calendar, files, and records to obtain information about pending matters that may require attention
- f) Notify courts, agencies, other attorneys and other appropriate entities of my disability or incapacity and, with client consent, seek and obtain extensions of time
- g) Notify clients and present to the clients options for obtaining new counsel
- h) Obtain client consent to transfer client property and assets to other counsel
- i) Provide clients with their property and assets and copies of material in their files and return unearned fees, costs and deposits
- j) File notices, motions and pleadings on behalf of clients who cannot be contacted prior to immediately required action
- k) Contact my malpractice carrier concerning claims or potential claims, to notify of my death, and to obtain extended reporting or “tail” coverage
- l) 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 6 years after the last client representation has terminated as required by the Wisconsin Rules of Professional Conduct. Files relating to minors should be kept for five years after the minor’s eighteenth birthday.
- m) Send statements for unbilled services and expenses and assist in collecting receivables
- n) Pay current debts and expenses of my practice, terminate leases, and discontinue memberships, listings, subscriptions and contracts.
- o) If my disability or incapacity is long term or permanent, 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; to determine if I have held any other fiduciary duty such as trustee, personal representative, and, if so, to inform appropriate individuals of my death, resign the position on my behalf, and assist the organization, trust, estate or entity in naming a successor agent, trustee, personal representative, or fiduciary;
- p) If my disability or incapacity is long term or permanent, determine if I was serving as a Personal Representative or Trustee for 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.
- q) Rent or lease alternative space if a smaller office would serve as well as my present office
- r) To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability or other insurance of my practice; to notify insurance carriers of my death, to cooperate with insurance carriers regarding matters relation to my coverage;
- s) To prepare, execute or file income, information or other tax returns or forms and to act on behalf of my law practice in dealing with the Internal Revenue Service, the Wisconsin Department of Revenue, or any other federal, state, county, municipal or local government agency or department.
- t) To execute any deed, contract, affidavit or other instrument necessary in order to carry out his/her responsibilities.



- u) If my disability or incapacity is long term or permanent, to sell or otherwise arrange for disposition of my furniture, books, or other personal property located in my office;
- v) To open my safety deposit box, which is located at insert bank name here, and used for my law practice, to inventory the box and to arrange for the return of property to clients.

5) **PERMANENT DISABILITY AND/OR INCAPACITY.** In the event that my disability/incapacity is determined to be permanent in nature by the individual(s) who declare me disabled/incapacitated and may never resolve itself so that I have no likelihood of returning to the practice of law, my Attorney-in-Fact shall petition a Court for an Order Authorizing the sale of my practice, providing notice to all individuals who may be “interested persons” in my Estate, as defined by Wis.Stat.§851.21. I believe that if my disability or incapacity is permanent, the sale of my practice will be the best decision for my clients, employees, and family.

- a) I authorize my Attorney-in-Fact to Petition a Court pursuant to Wisconsin Supreme Court Rule 12.02 to be appointed Trustee of my law practice.
- b) I authorize my Attorney-in-Fact to continue my practice until such time as (s)he can sell my practice. [It is my preference that the practice be sold to my associate\_\_\_\_\_, if satisfactory terms can be negotiated. OR It is my preference that my practice first be offered for sale to my colleague\_\_\_\_\_, and that if satisfactory terms can be negotiated that the sale be offered to others.]
- c) My Attorney-in-Fact shall notify clients of a proposed sale and offer them the opportunity to have their file transferred to another attorney before the sale.
- d) The Attorney-in-Fact shall be paid for his/her services at a reasonable hourly rate.
- e) My Attorney-in-Fact shall conduct any sale of my practice in accordance with the Wisconsin Rules of Professional Conduct and all other applicable laws.
- f) It is understood that my practice is a unique business and my Attorney-in-Fact will require some time to convert the practice into cash. I therefore direct that my Attorney-in-Fact be provided up to three years from the date (s)he determines my disability is permanent to convert my practice into cash and more time, if in the discretion of the court (s)he should have it.
- g) The sale of my practice shall include all office furnishings, books, electronic equipment, and any all rights and obligations held by my practice including but not limited to, my lease(s), contract agreements with software and publishing companies, contracts with service companies.
- h) The sale of my practice shall further include all my client files, contingent upon consent from the client.
- i) If my practice cannot be sold because no satisfactory sale agreement could be negotiated, my Attorney-in-Fact will assist transferring my clients to new attorneys.
- j) My Attorney-in-Fact shall also liquidate the practice’s assets, terminate any ongoing contractual obligations, wind up the financial aspects of my practice (invoicing, collecting receivables, returning unearned client funds), prepare final tax returns, and do all other necessary and appropriate things to close my business.

6) **GRANT OF LIMITED POWERS – PERMANENT DISABILITY AND/OR INCAPACITY.** I hereby authorize Attorney-in-Fact full power and authority to manage my practice after my disability or incapacity is determined permanent until sale. This authority shall include the right and power to:

- a) Continue employment of staff to assist with closing my practice, arrange for payment of staff, offer key staff members incentives as appropriate
- b) Enter my office and utilize my equipment and supplies
- c) Obtain access to my safe deposit boxes and obtain possession of items belonging to clients take possession and control of all assets of my law practice including client files and records

- d) Open and process my mail and access all communications to and from my practice, including but not limited to e-mail, text messages, voicemail, my practice website, etc.
  - e) Examine my calendar, files, and records to obtain information about pending matters that may require attention
  - f) Notify courts, agencies, other attorneys and other appropriate entities of my disability or incapacity and, with client consent, seek and obtain extensions of time
  - g) Notify clients and those who appear to be clients of my disability or incapacity and present to the clients options for obtaining new counsel
  - h) Obtain client consent to transfer client property and assets to other counsel
  - i) Provide clients with their property and assets and copies of material in their files and return unearned fees, costs and deposits
  - j) File notices, motions and pleadings on behalf of clients who cannot be contacted prior to immediately required action
  - k) Contact my malpractice carrier concerning claims or potential claims, to notify of my death, and to obtain extended reporting or "tail" coverage
  - l) 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 6 years after the last client representation has terminated as required by the Wisconsin Rules of Professional Conduct. Files relating to minors should be kept for five years after the minor's eighteenth birthday.
  - m) Send statements for unbilled services and expenses and assist in collecting receivables
  - n) Pay current debts and expenses of my practice, terminate leases, and discontinue memberships, listings, subscriptions and contracts.
  - o) 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; to determine if I have held any other fiduciary duty such as trustee, personal representative, and, if so, to inform appropriate individuals of my death, resign the position on my behalf, and assist the organization, trust, estate or entity in naming a successor agent, trustee, personal representative, or fiduciary;
  - p) Determine if I was serving as a Personal Representative or Trustee for 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.
  - q) Rent or lease alternative space if a smaller office would serve as well as my present office
  - r) To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability or other insurance of my practice; to notify insurance carriers of my death, to cooperate with insurance carriers regarding matters relating to my coverage;
  - s) To prepare, execute or file income, information or other tax returns or forms and to act on behalf of my law practice in dealing with the Internal Revenue Service, the Wisconsin Department of Revenue, or any other federal, state, county, municipal or local government agency or department.
  - t) To execute any deed, contract, affidavit or other instrument necessary in order to carry out his/her responsibilities
  - u) To sell or otherwise arrange for disposition of my furniture, books, or other personal property located in my office;
  - v) To open my safety deposit box, which is located at insert bank name here, and used for my law practice, to inventory the box and to arrange for the return of property to clients.
- 7) **DISBURSEMENT OF PROCEEDS IN THE EVENT OF A SALE OF MY PRACTICE.** If my law practice has been sold based upon the powers and instructions of this document, I direct that all proceeds from the sale shall be distributed as follows: (Enter specific instructions here for distribution to certain beneficiaries, estate residue, or as desired)

- 8) **INSTRUCTIONS REGARDING ALL DUTIES.** In performing the duties listed in this document, whether based upon a temporary or permanent disability, my Attorney-in-Fact is instructed to preserve client confidences and secrets and the attorney-client privilege and to make disclosure only to the extent necessary to carry out his/her authorized duties. My Attorney-in-Fact is to abide to the greatest extent possible with all ethical standards, including but not limited to, confidentiality, conflicts of interest, zealous representation, and informed consent. My Attorney-in-Fact shall rely, without the need for 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 advance payments 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. If I have no employees, my Attorney-in-Fact shall independently obtain all necessary information.
- 9) **INDEMNIFICATION.** My Personal Attorney-in-Fact shall be indemnified against claims of loss or damage arising out of any omissions or acts which were in good faith and reasonably believed to be in the best interest of my practice and were not the result of gross negligence or willful misconduct. Any such indemnity shall be satisfied first from assets of my law practice including my malpractice insurance coverage.
- 10) **EFFECTIVENESS.** This is a Durable, Limited and Springing Power of Attorney and shall only be effective if it has not been superseded or revoked by a subsequent similar Durable, Limited and Springing Power of Attorney which grants powers to control my law practice. This Power of Attorney is executed pursuant to Section 244, Wisconsin Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Name of Practicing Attorney)

STATE OF WISCONSIN                    )  
  )SS  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named (Practicing Attorney) to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

(Notarial Seal)

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_

## FORM 4 Sample Language for Representation Agreement for short term illness or absence

I am the attorney of record on this matter, but you understand that, as a sole practitioner, there may be times when due to sudden illness, emergency or other reason, I may be unavailable for short periods of time. As a requirement of my malpractice insurance, I have made arrangements with at least one other attorney (my alternate) in whose professional skills and ethical values I have confidence. My alternate would be available to assist you in the event of my short term absence. Before my alternate would undertake any portion of my representation of you and your matter, my alternate will conduct a conflict check to insure that no conflict of interest exists that would affect your matter or violate the Wisconsin Rules of Professional Conduct. At all times, supervision and responsibility for the actions of my alternate remain with me.

Any fees to my alternate will come out of fees paid to me and will not affect the payments and fees provided for in this agreement. This means that my alternate may be compensated from the balance of advanced fees paid to my office for work performed on your behalf and may expend funds for necessary cost to expedite your case in the same manner as I would. You are always entitled to a full accounting regardless of who performs work on your matter.

My alternate will notify you promptly of my status, and if you desire, make your file and any unearned balance of advanced fees or costs available to you upon your written request if you wish to transfer your file to a different attorney of your choosing.

By initialing this provision and by signing this agreement, in the event of my short term absence, you are giving my alternate permission to act on your behalf in my place, and to protect your interests until such time you may desire to make alternative arrangements.

## FORM 5: SAMPLE LETTER TO CLIENT IN EVENT OF DISABILITY

Dear Client:

As you may have heard, your attorney, \_\_\_\_\_, recently suffered a personal emergency. As a result, (s)he has been declared “disabled or incapacitated” and is not able to practice law at this time. Fortunately, Mr./Ms. \_\_\_\_\_ made adequate planning for just such an emergency. I have been named the Interim Attorney for Mr./Ms. \_\_\_\_\_ and will be handling his/her legal matters until Mr./Ms. \_\_\_\_\_ can return to practicing law.

As a client of Mr./Ms. \_\_\_\_\_ you are entitled to have your legal representation continue. I have conducted a conflict check and determined that I personally do not have any conflict with taking Mr./Ms. \_\_\_\_\_’s place as your attorney. You would remain a client of Mr./Ms. \_\_\_\_\_, however, for the time being, I would be handling your matter. If you have not already provided your consent to my temporary appointment as Interim attorney in the fee agreement you signed with attorney \_\_\_\_\_, ethical rules require that I receive your written “informed consent” before I can represent you, even in a temporary fashion. In fact, my representation cannot begin unless and until I have your consent in writing.

I encourage you to call me if you wish to discuss this matter in more detail. As I do not know how long Mr./Ms. \_\_\_\_\_ will be unable to practice, we may want to discuss a plan for either postponing your matter until his/her return, or continuing your representation. Additionally, you are free to consult with another attorney to confirm your options as a client and my ethical obligations or to move your matter to another attorney. If you choose to move your matter to another attorney, which is your choice, please know that I will provide you access to all your client materials and cooperate with that transition. Because your matter is important, please contact me no later than to discuss your options and decision.

If you consent to my representation until Attorney \_\_\_\_\_ can return to practice, please sign and return this letter.

I look forward to hearing from you soon, and possibly working with you on your legal matter. Thank you for your consideration and cooperation.

Very Truly Yours,

Interim Attorney

\*\*\* I have read this letter and being informed of the situation, I ☐ consent ☐ do not consent to having Attorney \_\_\_\_\_ represent me until Mr. \_\_\_\_\_ is able to resume representation. If I have elected to not consent to having Attorney \_\_\_\_\_ represent me, I direct Attorney \_\_\_\_\_ to deliver my file and any remaining advanced fees and costs that remain after payment of all outstanding sums, to ☐ me or ☐ Attorney \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Date

## FORM 6: SAMPLE LETTER TO CLIENT IN EVENT OF DEATH

### INTERIM ATTORNEY NAMED, NO PETITION UNDER SCR 12

Dear Client:

As you may have heard, your attorney, \_\_\_\_\_, recently passed away. Fortunately, Mr./Ms. made adequate planning for handling his/her practice in the event of his/her death. I have been named the attorney-in-fact for Mr./Ms. and will be handling his/her legal matters until the practice can be wound up and closed. [If practice is being sold add this provision] Pursuant to the directives in Mr./Ms.'s Will, his/her practice is being sold to \_\_\_\_\_.

You are free to move your file to another attorney or you may consult with another attorney to confirm my ethical obligations and your options as a client. If you choose to move your matter to another attorney, which is your choice, please know that I will provide you access to all your client materials and cooperate with that transition.

As a client of Mr./Ms.\_\_\_\_ you are entitled to have your legal representation move forward. I have conducted a conflict check and determined that I personally do not have any conflict with taking Mr./Ms.\_\_\_\_'s place as your Interim attorney until the sale of the practice. I am required by ethical rules to receive your "informed consent" before I can represent you, even in a temporary fashion. In fact, my representation cannot begin unless and until I have your consent in writing. Further, if you wish to have your matter transferred to the purchasing attorney,\_\_\_\_, you will need to consent in writing to his/her representation.

I encourage you to call me if you wish to discuss this matter in more detail. Because your matter is important, please contact me no later than to discuss your options and decision. If you consent to having me continue representation until a new attorney can be found, please sign and return this letter no later than (DATE). I look forward to hearing from you soon, and possibly working with you on your legal matter. Thank you for your consideration and cooperation.

Very Truly Yours,

Trustee Attorney

Please complete the following:

\*\*\* ☐ I have read this letter and being informed of the situation, I consent to having Attorney\_\_\_\_ represent me as Interim Attorney and to the transfer of my file and any remaining advanced fees and costs that remain after payment of all outstanding sums, to Attorney \_\_\_\_\_ who is purchasing the practice of my deceased attorney.

☐ I do not consent to having Attorney \_\_\_\_\_ represent me as Interim Attorney and I direct Attorney \_\_\_\_\_ to deliver my file and any remaining advanced fees and costs that remain after payment of all outstanding sums, to ☐ me or ☐ Attorney \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Date

## FORM 7 SAMPLE AUTOMATED REPLY \*\*\*\*\*ANNOUNCEMENT REGARDING DISABILITY\*\*\*\*\*

Your attorney, \_\_\_\_\_, recently suffered a personal emergency. As a result, (s)he is not able to practice law at this time. Fortunately, Mr./Ms. \_\_ made adequate planning for just such an emergency. I have been named the Interim Attorney for Mr./Ms. and will be temporarily handling his/her legal matters until Mr./Ms. can return to practicing law.

**Please respond by sending me an email at [outsider email] with your name and the case reference.**

You have the right to transfer your file to a different attorney of your choice and to instruct that any unearned fees and costs paid in advance to Mr./Ms. \_\_\_\_\_ be transferred to your new attorney or returned to you. Or you may have your legal representation continue by me as Interim attorney as a client of Mr./Ms. \_\_\_\_\_ so long as no conflict of interest exists with my representation of you.

When I receive your response to this email and unless you notify me that you want your file transferred, I will then conduct a conflict check to determine if I personally have any conflict with taking [attorney]'s place as your attorney. If you have not already provided your consent to my temporary appointment as Interim attorney in your fee agreement Mr./Ms. \_\_\_\_\_, I will provide you with an authorization for you to sign and return. Ethical rules require that I receive your written "informed consent" before I can represent you, even in a temporary fashion. In fact, my representation cannot begin unless and until I have your consent in writing. If you then consent to my representation, you would remain a client of Mr./Ms. \_\_\_\_\_ however, for the time being, I would be handling your matter.

[Outsider]

[Telephone]

[Fax]

[Email Address]

**\*\*\*\*\*IMPORTANT MESSAGE\*\*\*\*\***

**YOUR EMAIL WILL NOT BE OPENED, SAVED, OR FORWARDED. PLEASE FOLLOW THE DIRECTIONS ABOVE. YOUR EMAIL WILL BE DELETED WITHOUT BEING READ OR REVIEWED.**

**To protect client confidentiality and legally privileged and/or confidential information, your email will NOT be read, will NOT be saved, and will NOT be forwarded. It will be deleted from [Attorney]'s email server without being opened.**

**Thank you for your cooperation and understanding.**

## FORM 8:

### INFORMATION FOR THE OUTSIDER CHECKLIST

- Names and contact information for staff
- Locations of financial accounts, account numbers, passwords for online access
- Insurance carrier(s) information
  - Malpractice
  - Life insurance
  - Disability insurance
- Directions for accessing computer software:
  - E-mail login and password
  - Server login and password
  - Accounting/billing software login and password
  - Calendaring software login and password
- Information about monthly bills:
  - Rent
  - Document shredders
  - Office equipment under lease
- Other logins and software:
  - Payroll taxes
  - Credit card processing



## LAW OFFICE LIST OF CONTACTS

ATTORNEY NAME:

Social Security No.:

State Bar of WI No.:

Federal Employee ID#:

State Tax ID No.:

Date of Birth:

Office Address:

Office Phone:

Email:

Home Address:

Home Phone:

### **SPOUSE:**

Name:

Work Phone:

Email:

Employer:

**OFFICE MANAGER:**

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone #: \_\_\_\_\_

\_\_\_\_\_

**COMPUTER AND TELEPHONE PASSWORDS:**

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

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_

Email: \_\_\_\_\_

☐ If checked, see attached list of passwords

**POST OFFICE OR OTHER MAIL SERVICE BOX:**

Location: \_\_\_\_\_

Box No.: \_\_\_\_\_

Obtain Key From: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

**PERSONAL REPRESENTATIVE:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Other Signatory: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**SECRETARY:**

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_

**BOOKKEEPER:**

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_

**LANDLORD:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**ATTORNEY:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**ACCOUNTANT:**

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Phone:

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEYS TO HELP WITH PRACTICE CLOSURE:**

First Choice:

\_\_\_\_\_

Address:

Address:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Email:

\_\_\_\_\_

Second Choice:

\_\_\_\_\_

Address:

Address:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Email:

\_\_\_\_\_

**LOCATION OF WILL AND/OR TRUST:**

Access Will or Trust by  
Contacting:

Address:

Phone:

**PROFESSIONAL CORPORATIONS:**

Corporate Name:

Date Incorporated:

Location of Corporate  
Minute Book:

Location of Corporate  
Seal:

Location of Corporate  
Stock Certificate:

Location of Corporate  
Tax Returns:

Fiscal Year-End  
Date:

Corporate Attorney:

Address:

Phone:

**PROCESS SERVICE COMPANY:**

Name:

Address:

Phone:

Contact:

**OFFICE-SHARER OR "OF COUNSEL:"**

Name:

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

**OFFICE PROPERTY /LIABILITY COVERAGE:**

Insurer: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**OTHER IMPORTANT CONTACTS: (Continued on next page)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Reason for Contact: \_\_\_\_\_

**OTHER IMPORTANT CONTACTS: (Continued)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Reason for Contact: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone:

Reason for Contact:

**GENERAL LIABILITY COVERAGE:**

Insurer:

Address:

Phone:

Policy No.:

Contact Person:

**LEGAL  
MALPRACTICE —PRIMARY COVERAGE:**

Provider:

Address:

Phone:

**LEGAL MALPRACTICE EXCESS COVERAGE:** (Continued on next page)

Insurer:

Address:

**LEGAL MALPRACTICE EXCESS COVERAGE:** (Continued)

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**VALUABLE PAPERS COVERAGE:**

Insurer: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**OFFICE OVERHEAD/DISABILITY INSURANCE:**

Insurer: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**HEALTH INSURANCE:**

InsurerName: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Persons Covered: \_\_\_\_\_

Contact Person: \_\_\_\_\_



**DISABILITY INSURANCE:**

Insurer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**LIFE INSURANCE:**

Insurer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**WORKERS' COMPENSATION INSURANCE:**

Insurer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**STORAGE LOCKER LOCATION:** (Continued on next page)

Storage Company: \_\_\_\_\_

Locker No.: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Obtain Key From: \_\_\_\_\_

Address: \_\_\_\_\_

**STORAGE LOCKER LOCATION:** (Continued)

Phone:

Items Stored:

Storage Company:

Locker No.:

Address:

Phone:

Obtain Key From:

Address:

Phone:

Items Stored:

**SAFE DEPOSIT BOXES:** (Continued on next page)

Institution:

Box No.:

Address:

Phone:

Obtain Key From:

Address:

Phone:

Other Signatory:

Address:

**SAFE DEPOSIT BOXES:** (Continued)

Phone:

Items Stored:

Institution:

Box No.:

Address:

Phone:

Obtain Key From:

Address:

Phone:

Other Signatory:

Address:

Phone:

Items Stored:

Institution:

Box No.:

Address:

Phone:

Obtain Key From:

Address:

Phone:

Other Signatory:

Address:

Phone:

**SAFE DEPOSIT BOXES:** (Continued)

Items Stored:

---

---

---

---

**LEASES:**

Items Leased:

---

Lessor:

---

Address:

---

Phone:

---

Expiration Date:

---

Item Leased:

---

Lessor:

---

Address:

---

---

Phone:

---

Expiration Date:

---

**LAWYER TRUST ACCOUNT:**

IOLTA:

---

Institution:

---

Address:

---

---

Phone:

---

Account Number:

---

Other Signatory:

---

Address:

---

Phone:

---

**INDIVIDUAL TRUST ACCOUNT:**

Name of Client:

---

Institution:

---

Address:

---

Phone:

---

**INDIVIDUAL TRUST ACCOUNT (Continued)**

Account Number: \_\_\_\_\_  
Other Signatory: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
\_\_\_\_\_

**GENERAL OPERATING ACCOUNT:**

Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Other Signatory: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Other Signatory: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Other Signatory: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
\_\_\_\_\_

**BUSINESS CREDIT CARDS:**

Institution: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Account No.: \_\_\_\_\_

Other Signatory: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

Institution: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Account No.: \_\_\_\_\_

Other Signatory: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**MAINTENANCE CONTRACTS:**

Items Covered: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Item Covered: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**MAINTENANCE CONTRACTS (Continued)**

Expiration Date: \_\_\_\_\_

Item Covered: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:**

State of: \_\_\_\_\_

Bar Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Bar ID#: \_\_\_\_\_

State of: \_\_\_\_\_

Bar Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Bar ID#: \_\_\_\_\_

State of: \_\_\_\_\_

Bar Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Bar ID# \_\_\_\_\_

**PASSWORDS:**

[illegible]



## ADDITIONAL RESOURCES

LEARN

FILE TRACKING CHART – OFFICE CLOSING

File Name	File No.	Date Reviewed	Date Discussed w/Client	Instructions from Client	File Copied	File sent to new lawyer	Other actions needed	Receipt for file rec'd and filed.

## CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

The term "Closing Attorney" refers to the attorney whose office is being closed.

1. If you are operating pursuant to the provision of the Closing Attorney's Will, Trust or Durable Power of Attorney, obtain copies of those documents.
2. Meet with the spouse or designated party of the Closing Attorney to obtain access to the office and files of the Closing Attorney. Enter the closing Attorney's office and, if necessary, remove files to a safe place.
3. Inventory the files to determine which are active and which are inactive. Keep a list of the files reviewed with a summary containing the name of the client, nature of the file, work done by the trustee and disposition of the file.
4. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, etc.
5. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery, for consent to reset due dates, hearings and appearances. If making these arrangements constitutes a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.
6. Send clients who have active files a letter explaining that the law office is being closed. Depending on arrangements made by the Closing Attorney, use the appropriate notice found in *After All You Are Only Human: The Solo Practitioner's Handbook for Disability and Death* prepared by the State Bar of Wisconsin Solo/Small Firm & General Practice Section. If no prior arrangements have been made, send a letter to each client who has an active matter pending notifying them of the need to identify substitute counsel and to retrieve the file. Provide clients with a date by which they should pick up their files. Inform clients that new counsel should be chosen immediately. Consider placing a notice in the local newspaper.
7. In the event of death or permanent disability, notify the Courts, the State Bar of Wisconsin and the Office of Lawyer Regulation.
8. Contact courts and opposing counsel for files that require discovery or court appearances immediately. Obtain extensions where necessary. Confirm extensions in writing.
9. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
10. Look for an office procedures manual. Determine if there is a way to get a list of clients with active files.
11. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Closing Attorney as attorney of record. Review SCR 20:1.16.
12. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
13. Pick an appropriate date and check to see if all cases have either a motion and order allowing withdrawal of the Closing Attorney or a Substitution of Attorney filed with the court.
14. Decide whether you will keep a copy of the file for the Closing Attorney's records. In Wisconsin, the file is the property of the client. All clients should either pick files (and sign a receipt acknowledging that they received it) or sign an authorization for you to transfer the file to a new attorney. If the client is picking up the file and there are original documents in it (such as a title to property), return the original documents to the client and keep a copy for the Closing Attorney's file. Keep records of how and to whom the files are distributed.
15. All clients should be advised on where their closed files will be stored, and who they should contact in order to retrieve a closed file. If the Closing Attorney's representative does not make arrangement for long term storage of the Closing Attorney's files, there is no mechanism under the rules to force the representative to do so. In this event, you should seek appointment as Trustee Attorney under SCR 12 to

ensure that your actions are approved by the Court.

16. If the attorney whose practice is being closed was a sole practitioner (the Closing Attorney), try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Closing Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
17. Contact the Closing Attorney's malpractice insurance carrier, if applicable, about extended (tail) coverage.
18. If you are closing down the office of an attorney who died, you should notify the State Bar of Wisconsin. This information should be provided to Customer Service at the State Bar of Wisconsin at [service@wisbar.org](mailto:service@wisbar.org) or by calling 800.728.7788.
19. If you have authorization to handle the Closing Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine if funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should either be returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due, and/or any money in trust. (To withdraw money from the Closing Attorney's accounts, if you are not an agent under a power of attorney, you will need to be appointed as a trustee attorney under SCR 12. See SCR 12:02 and SCR 12.03 for the trustee attorney's responsibilities and powers. Money from clients for services rendered by the Closing Attorney should go to the Closing Attorney or his/her estate.
20. If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.
21. If your responsibilities include sale of the practice, you may want to advertise in the Classifieds section of the State Bar of Wisconsin website [www.wisbar.org](http://www.wisbar.org). Contact information for the Wisbar classifieds may be found at <https://www.wisbar.org/aboutus/Classifieds/For-Sale-or-Rent/Pages/default.aspx>.
22. Keep track of services provided by you and your assistants, along with expenses incurred.
23. You may wish to consider a petition under SCR 12 to be appointed as Trustee Attorney to limit potential malpractice claims and to operate under established procedures if the Closing Attorney has not taken adequate steps to close the practice without reliance on SCR 12.
24. If you are seeking appointment under SCR 12 or someone else does and you are appointed as Trustee Attorney, use the following checklist:
  - a. Enter the Closing Attorney's law office and, if necessary, remove files to a safe place.
  - b. Inventory the files to determine which are active and which are inactive. Keep a list of the files reviewed with a summary containing the name of the client, nature of the file, work done by the trustee and disposition of the file.
  - c. Send a letter to each client who has an active matter pending with the Closing Attorney. The letter should notify the client of the need to identify substitute counsel and to retrieve the file. Consider placing a notice in the local newspaper.
  - d. Take steps to preserve rights of clients while the client is arranging for substitute counsel. Often one telephone call to opposing counsel, explaining the problem, is sufficient.
  - e. Distribute files to clients, as the clients direct. Keep records of how and to whom the files are distributed. Follow the court order regarding the disposition of unclaimed files.
  - f. If there are funds in the Closing Attorney's trust account, reconcile the trust account records to determine ownership of the funds.
  - g. In appropriate cases, disburse funds belonging to clients from the trust account after filing a motion, giving notice to claimants if necessary and obtaining a proper order.

- h. Keep track of services provided by the trustee and assistants, along with expenses incurred.
- i. Submit a final report to the Court and petition for discharge.

# APPOINTMENT AS TRUSTEE ATTORNEY UNDER SCR 12

Appointment under SCR 12 is outside the scope of this guide. For assistance with appointment under SCR 12, contact the State Bar of Wisconsin's Ethics Hotline at 608.250.6168 or 800.728.9404 ext. 6168. Below you will find the text of SCR 12. Following SCR 12 you will find a number of forms that have been used in Wisconsin for SCR 12 appointments.

## SCR CHAPTER 12

### CLIENT PROTECTION

#### **SCR 12.01 Attorney's death or disappearance without compliance with license suspension or revocation order.**

If an attorney whose license is suspended or revoked disappears or dies and has failed to comply with SCR 22.26 and no partner, personal representative or other responsible party capable of conducting the attorney's affairs is known to exist, a judge of a court of record in a county in which the attorney maintained an office shall appoint an attorney to enter the former offices of the attorney or other location as may be necessary for the sole purpose of protecting clients' rights, files and property and delivering the files and property to the clients or to their successor counsel. The appointed attorney may be compensated in an amount approved by the judge out of the assets of the attorney who has disappeared or died.

#### **SCR 12.02 Sole practitioners; medical incapacity.**

- (1) (a) In addition to any proceedings that are instituted by the office of lawyer regulation, in the case of an attorney who is a sole practitioner, any interested person or person licensed to practice law in this state may file a petition in the circuit court for the county in which the attorney resides or maintains his or her office alleging that the attorney has a medical incapacity. The petition and a notice of hearing shall be served personally upon the attorney alleged to have a medical incapacity. If personal service upon the attorney cannot be accomplished, notice by publication of a class 1 notice, as provided in ch. 985 of the statutes, and mailing shall be sufficient service, except that the court may determine that additional notice is required. Upon a showing by clear, satisfactory and convincing evidence at a hearing that the attorney has a medical incapacity, if no other satisfactory arrangements have been made to assist the attorney, the court shall appoint a trustee attorney and notify the office of lawyer regulation of the appointment.
- (b) An attorney appointed under par. (a) shall enter the offices of the attorney and assist the attorney to do all of the following:
  1. Protect the clients' rights, files and property.
  2. Notify all clients being represented in pending matters of the appointment of the attorney under par. (a) as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, an attorney appointed under par. (a) may act as interim counsel, subject to par. (f) 4.
  3. Deliver client files and property to the clients upon their request.
  4. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
  5. Assist and cooperate with the attorney in the suspension, termination or windup of his or her practice.
- (c) The court may order an examination of the attorney by qualified medical and psychological experts and order the examined attorney to pay the expense of the examination.
- (d) The court may make other orders pending a hearing regarding any of the following:
  1. Restrictions on the disbursement of funds.
  2. Restrictions on the transfer, removal or concealment of files.

3. Preparation of lists of all clients in pending matters.
  4. Preparation of lists of all matters pending before any court or administrative agency.
  5. Disclosure of what arrangements the attorney may have made or might suggest to protect the interest of his or her clients.
- (e) All papers, files, transcripts, communications and proceedings pertaining to any petition under this subsection shall be closed and remain confidential until the court has made a finding of medical incapacity. This paragraph does not prohibit any publication the court finds necessary and does not prohibit the court from notifying another court before which a similar petition may be filed.
- (f) An attorney appointed under par. (a) and his or her law firm shall:
1. Not serve in any other capacity as counsel for the assisted attorney or his or her family.
  2. Be compensated from any assets generated in connection with his or her efforts for his or her professional services and reasonable and necessary expenses.
  3. Be eligible to be a purchaser of the law practice under SCR 20:1.17.
  4. Not be permitted to act as successor attorney except and until the trustee attorney becomes a purchaser of the law practice under SCR 20:1.17.
- (g) The assisted attorney may nominate a trustee attorney and may consent to the appointment of a trustee attorney.
- (h) The court shall appoint a guardian ad litem pursuant to s. 803.01(3) of the statutes if the court has reason to believe that the attorney is mentally incompetent.
- (2) The court shall review the amounts requested by the trustee attorney for compensation and reimbursement under sub. (1)(f)2. and shall make a finding as to the reasonableness and necessity of the proposed compensation and expenses before entering the order authorizing their payment. The assisted attorney shall be personally liable for any compensation and expenses ordered by the court.
- (3) Upon a showing that the assisted attorney is no longer incapacitated, or upon a showing that the trustee attorney has completed his or her responsibilities, the court may terminate the proceeding and discharge the trustee attorney.
- (4) A trustee attorney appointed under sub. (1)(a) shall be deemed to be a member of a committee described under SCR 20:8.3(c).
- (5) A trustee attorney is governed by the same rules of professional conduct applicable to the assisted attorney with respect to client matters and files.
- (6) The trustee attorney appointed under sub.(1)(a) shall have his or her own professional liability coverage with a carrier admitted to do insurance business in this state and whose coverage language clearly covers the work of the trustee attorney acting under this section.

### **SCR 12.03 Sole practitioners; death or disappearance.**

- (1) Death. (a) Upon the death of an attorney who is a sole practitioner, any interested person or person licensed to practice law in this state may file a petition in the circuit court for the county in which the attorney resided or maintained his or her office alleging that the attorney is deceased and that no satisfactory arrangements have been made for the winding up of his or her practice. The petition and a notice of hearing shall be served upon the personal representative for the estate of the deceased attorney. If there is no personal representative appointed, service shall be made upon an adult heir or such person as the court considers appropriate and the court may appoint a special administrator in those cases. Upon a showing at a hearing that no satisfactory arrangements have been made to wind up the practice of the deceased attorney, the court shall appoint a trustee attorney and notify the office of lawyer regulation of the appointment

(b) An attorney appointed under par. (a) shall enter the offices of the deceased attorney and do all the following:

1. Protect the clients' rights, files and property.
2. Notify all clients being represented in pending matters of the appointment of the attorney under par. (a) as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, an attorney appointed under par. (a) may act as interim counsel, subject to the par. (c) 4.
3. Deliver client files and property to the clients upon their request.
4. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
5. Assist and cooperate with the deceased attorney's personal representative, special administrator or other representative of the deceased attorney's estate in the termination or sale of the law practice under SCR 20:1.17.

(c) An attorney appointed under par. (a) and his or her law firm shall:

1. Not serve in any other capacity in the administration of the deceased attorney's estate.
2. Be compensated from the assets of the estate for his or her professional services and reasonable and necessary expenses.
3. Be eligible to be a purchaser of the law practice under SCR 20:1.17.
4. Not be permitted to act as successor attorney except and until the trustee attorney becomes a purchaser of the law practice under SCR 20:1.17.

(d) The personal administrator and heirs of the deceased attorney may nominate a trustee attorney.

(e) The estate of the deceased attorney shall be liable for the compensation and expenses of the trustee attorney ordered under sub. (3).

(2) Disappearance. (a) Upon the abandonment or disappearance of an attorney who is a sole practitioner that continues for not less than 21 days, any interested person or person licensed to practice law in this state may file a petition in the circuit court for the county in which the attorney resided or maintained his or her office alleging the abandonment or disappearance and that no satisfactory arrangements have been made to continue the practice. The petition and a notice of hearing shall be served personally upon the attorney. If personal service upon the attorney cannot be accomplished, notice by publication of a class 1 notice, as provided in ch. 985 of the statutes, and mailing shall be sufficient service, except that the court may determine that additional notice is required. Upon a finding that the attorney has disappeared or abandoned his or her practice, if no other satisfactory arrangements have been made to continue the practice, the court shall appoint a trustee attorney and notify the office of lawyer regulation of the appointment.

(b) An attorney appointed under par. (a) shall enter the offices of the absent attorney and do all of the following:

1. Protect the clients' rights, files and property.
2. Notify all clients being represented in pending matters of the appointment of the attorney under par. (a) as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, an attorney appointed under par. (a) may act as interim counsel, subject to par. (c) 3.
3. Deliver client files and property to the clients upon their request.
4. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
5. Collect any moneys and safeguard any assets in the office of the absent attorney and hold the moneys and assets in trust pending their disposition upon order of the court.



- (c) An attorney appointed under par.(a) and his or her law firm shall:
    - 1. Not serve in any representative capacity for the absent attorney or his or her family.
    - 2. Be compensated from the assets collected for his or her professional services and reasonable and necessary expenses.
    - 3. Not be permitted to act as successor attorney.
  - (d) The absent attorney shall be personally liable for the compensation and expenses of the trustee attorney ordered under sub. (3).
  - (e) The trustee attorney shall hold in trust any remaining assets of the attorney subject to order of the court.
- (3) The court shall review the amounts requested by the trustee attorney for compensation and reimbursement under subs. (1)(c)2. and (2)(c)2. and shall make a finding as to the reasonableness and necessity of the compensation and expenses before entering the order authorizing their payment.
  - (4) Upon a showing that the trustee attorney has completed his or her responsibilities under sub. (1) or (2), the court may discharge the trustee attorney.
  - (5) A trustee attorney appointed under sub. (1)(a) or (2)(a) shall be deemed to be a member of a committee described under SCR 20:8.3(c).
  - (6) A trustee attorney is governed by the same rules of professional conduct applicable to the absent attorney with respect to client matters and files.
  - (7) The trustee attorney appointed under sub. (1)(a) or (2)(a) shall have his or her own professional liability coverage with a carrier admitted to do insurance business in this state and whose coverage language clearly covers the work of the trustee attorney acting under this section.
  - (8) In the event that more than one petition is filed under SCR 22.27(9)(a) or sub. (1) or (2) of this section, the proceedings shall be consolidated and only one trustee attorney shall be appointed.

#### COMMENT

- 1. An agreed-to voluntary suspension is subject to the provisions of SCR 22.26 activities following suspension or revocation.
- 2. Source, s. 256.286, 1975 stats.

#### **SCR 12.04 Wisconsin lawyers' fund for client protection: creation and purpose.**

A Wisconsin Lawyers' Fund for Client Protection of the state bar of Wisconsin is created to reimburse, to the extent and in the manner provided by this chapter, losses caused by the dishonest conduct of members of the state bar of Wisconsin.

#### COMMENT

The Wisconsin Lawyers' Fund for Client Protection was established in 1981 and was originally entitled The Clients' Security Fund. The name change reflects amendments to the ABA Model Rules for Lawyer's Funds for Client Protection, and is more descriptive of the funds' purpose.

#### **SCR 12.045 Definitions.** In ss. 12.04 to 12.11:

- (1) "Attorney" means a person who, at the time of the act complained of, was a member of the state bar of Wisconsin, except a person who was an inactive member at that time.

- (2) "Claimant" means a person who has applied to the fund for reimbursement.
- (3) "Client" means a person engaging the professional legal services of an attorney or for whose benefit the attorney is acting in a fiduciary capacity.
- (4) "Committee" means the Wisconsin lawyers' fund for client protection committee.
- (5) "Dishonest Conduct" means any of the following:
- (a) A willful act committed by an attorney that causes a reimbursable loss to a client in the manner of defalcation or embezzlement of money.
  - (b) The intentional taking or conversion of money, property or other things of value.
  - (c) The failure to refund an unearned advanced fee.
- (6) "Fund" means the Wisconsin lawyers' fund for client protection of the state bar of Wisconsin.
- (7) (a) "Reimbursable Loss" means a loss of money or other property of a client that meets all of the following conditions:
- 1. The loss was caused by the dishonest conduct of an attorney while performing services under his or her license to practice law in Wisconsin.
  - 2. The attorney was acting either as attorney in the matter out of which the loss arose or in a fiduciary capacity customary to the practice of law.
  - 3. The attorney has:
    - a. Died;
    - b. Been adjudicated a bankrupt;
    - c. Been adjudicated incompetent;
    - d. Been disbarred or suspended from the practice of law;
    - e. Consented to the revocation of his or her license to practice law;
    - f. Failed to refund an unearned advanced fee;
    - g. Become a judgment debtor of the person claiming the loss;
    - h. Been adjudged guilty of a crime based upon the dishonest conduct of the attorney; or
    - i. Left the jurisdiction or cannot be found.
  - 4. The act that occasioned the loss occurred on or after March 1, 1981.
- (b) "Reimbursable Loss" does not include any of the following:
- 1. Losses of a spouse, child, parent, grandparent, sibling, partner, associate, or employee of the attorney or attorneys causing the losses.
  - 2. Losses covered by any bond, surety agreement or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogated interest.
  - 3. Losses of any financial institution that could be recoverable under a "banker's blanket bond" or similar insurance or surety contract, whether or not the institution had such bond or contract in force.
  - 4. Losses that are recoverable from some other source.
  - 5. Losses barred under any applicable statute of limitations.
- (8) "State bar" means the state bar of Wisconsin.

### **SCR 12.05 Administration.**

- (1) The fund shall be operated and administered by the committee of the state bar to be known as the Wisconsin lawyers' fund for client protection committee. The committee shall consist of 5 lawyers and 2 nonlawyer members who are appointed by the president of the state bar. The initial terms of the members are: one lawyer to serve until July 1, 1982; one lawyer to serve until July 1, 1983; one lawyer and one nonlawyer member to serve until July 1, 1984; one lawyer to serve until July 1, 1985; one lawyer and one nonlawyer member to serve until July 1, 1986. Upon the expiration of the initial appointments, each subsequent appointment shall be for a term of 5 years. No person who has served a full term of 5 years shall be eligible for reappointment until one year after the termination of his or her last term. A vacancy on the committee shall be filled by appointment by the president of the state bar for the unexpired term.
- (2) Each year the chairperson of the committee shall be appointed by the President of the state bar from among the members of the committee. The committee shall meet from time to time upon the call of the chairperson.
- (3) The committee members shall serve without compensation but shall be entitled to reimbursement from the fund for their expenses reasonably incurred in the performance of their duties.

### **SCR 12.06 Powers and duties of the committee.**

- (1) Consideration of claims. The committee shall consider applications for reimbursement from the fund for losses caused by the dishonest conduct of an attorney. The committee shall investigate claims of losses coming to its attention and may reject or allow claims in whole or in part.
- (2) Committee discretion. The committee may, in its discretion, determine the order and manner of payment of claims. In cases of extreme hardship or if other interests of justice so warrant, the committee may, in its discretion, recognize a claim which would otherwise be excluded under this chapter.
- (3) Rules of procedure. The committee shall adopt rules of procedure not inconsistent with this chapter for the management of the fund and its affairs, for the presentation of claims, for the processing and payment thereof and for the subrogation or assignment to the state bar for the benefit of the fund of the rights of the claimant to the extent paid from the fund.
- (4) Investment. All sums received by the state bar for the fund shall be maintained in a separate account and shall be managed by the state bar pursuant to the provisions of SCR chapter 10 and the state bar bylaws pertaining to the investment and management of state bar assets, subject to the written direction of the committee under rules adopted by the committee.
- (5) Use of funds. The committee may use the fund for any of the following purposes within the scope of the fund's objectives:
  - (a) To make payments on claims as provided in this chapter.
  - (b) To purchase insurance to cover such payments in whole or in part as is deemed appropriate.
  - (c) To pay the reasonable and necessary expenses of the committee and administration of the fund.
- (6) Access to office of lawyer regulation files. Notwithstanding other Supreme Court rules to the contrary, during the investigation of a claim the committee or its designee shall have access to the files of the office of lawyer regulation which pertain to the alleged loss.
- (7) Audit and report of activities. The fund shall be audited by auditors annually and at such other times as the Supreme Court shall direct, such audits to be at the expense of the fund. The annual audit shall be included in a report to be submitted annually by the committee to the Supreme Court reviewing in detail the administration of the fund and the committee's activities during the preceding year.
- (8) Enforcement of claims. The committee may press claims which the state bar may have on behalf of the fund and may pay all reasonable and necessary expenses connected therewith.

### **SCR 12.07 Assessment of attorneys; reserve; enforcement.**

- (1) Initial assessment. Every attorney shall pay to the fund an initial assessment of \$5.
- (2) Annual assessments; reserve. (a) *Annual assessments.* Commencing with the state bar's 2013 fiscal year, every attorney shall pay to the fund an annual assessment of \$20. An attorney whose annual state bar membership dues are waived for hardship shall be excused from the payment of the annual assessment for that year. An attorney shall be excused from the payment of the annual assessment for the fiscal year during which he or she is admitted to practice in Wisconsin. (b) *Reserve.* As of May 1 of each year, any funds in excess of those required for payment of approved claims shall be maintained in a reserve account for the Wisconsin Lawyers Fund for Client Protection.
- (3) Sufficiency; report. (a) *Sufficiency of the fund.* The committee shall determine the net value of the fund as of May 1 of each year. The committee shall determine the net value of the fund, including the reserve, after deducting all claims which the committee has determined to pay and which are not disposed of at the date of valuation, deferred claims, claims received but not yet considered by the committee, and all expenses properly chargeable against the fund.  
  
(b) Report. The committee shall file a report of the net value of the fund with the Supreme Court by May 31 of each year.
- (4) Collection; failure to pay. The initial assessment and annual assessments shall be collected at the same time and in the same manner as the annual membership dues for the state bar are collected. An attorney who fails to timely pay the initial assessment or any annual assessment shall have his or her right to practice law suspended pursuant to SCR 10.03(6).
- (5) Periodic review. The Supreme Court shall review SCR 12.07 every five years to determine if the assessment and reserve fund is adequate to timely meet the legitimate claims of clients.

### **SCR 12.08 Payment of claims.**

- (1) Considerations. No claim shall be paid unless there is an affirmative vote for payment of at least 4 members of the committee. In determining payment the committee shall consider, among other appropriate factors, the following:
  - (a) The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented;
  - (b) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;
  - (c) The degree of hardship suffered by the claimant as a result of the loss;
  - (d) The degree of negligence, if any, of the claimant which may have contributed to the loss;
  - (e) The existence of any collateral source for the reimbursement of the loss.
- (2) Limitations on payment. (a) The committee shall, by rule, fix the maximum amount which any one claimant may recover from the fund and may, by rule, fix the aggregate amount which may be recovered because of the dishonest conduct of any one attorney.  
  
(b) If the fund is not sufficient to pay all claims which the committee determines should be paid, the committee may, in its discretion, defer payment of all or any portion of one or more claims. If the full amount of the claim has not been paid within 5 years from the date the claim is made, any balance remaining unpaid shall remain unpaid and the claim shall be closed.
- (3) Rights to fund. No claimant or any other person or organization shall have any right in the fund as beneficiary or otherwise. All payments from the fund shall be a matter of discretion and not of right.

- (4) Attorney's fee. No attorney representing a claimant shall be compensated from any source for his or her services.

**SCR 12.09 Claims for reimbursement.**

- (1) The claimant shall prepare or cause to be prepared an application for reimbursement containing the following information:
- (a) The name and address of the attorney alleged to have caused the loss;
  - (b) The amount of the loss claimed;
  - (c) The date or period of time during which the alleged loss was incurred;
  - (d) The name and address of the claimant;
  - (e) A general statement of facts relative to the claim;
  - (f) Verification by the claimant;
  - (g) Other information which the committee may require.
- (2) The committee shall conduct or cause to be conducted an investigation to determine whether the claim is for a reimbursable loss and to guide the committee in determining the extent, if any, to which reimbursement shall be made. When the claim is for a non-reimbursable loss or is otherwise barred, no further investigation need be conducted.
- (3) A copy of the application shall be personally served upon the attorney or sent by certified mail to his or her address shown on the state bar's membership roll. The attorney or, in the event the attorney is deceased, his or her personal representative shall be given an opportunity to be heard by the committee.
- (4) The committee shall advise the claimant of its final determination of the claim.

**SCR 12.10 Subrogation.**

- (1) If payment is made from the fund, the fund shall be subrogated in the amount of that payment and may bring such action as is deemed advisable against the attorney, his or her assets or estate. The action may be brought either in the name of the claimant or in the name of the state bar on behalf of the fund. The claimant shall be required to execute a subrogation agreement which shall include a provision that in the event the claimant or his or her estate should ever receive any restitution from the attorney or his or her estate, the claimant shall repay to the fund the amount received up to the amount of the payment made from the fund. Upon commencement of any action by the fund pursuant to its subrogation rights, the committee shall advise the claimant, who may then join in the action to press a claim for his or her loss in excess of the amount of the reimbursement from the fund.
- (2) Any amounts recovered from the attorney, either by the fund or by the claimant, in excess of the amount to which the fund is subrogated, less the actual costs of such recovery, shall be paid to or retained by the claimant.

**SCR 12.11 Confidentiality.**

- (1) Claims, proceedings and reports involving claims for reimbursement are confidential until the fund authorizes payment to the claimant, except as otherwise provided by these rules or by law. After payment of a claim, the fund may publicize the nature of the claim, the amount of the payment, and the name of the lawyer. The fund may not publicize the name and address of the claimant unless authorized by the claimant.
- (2) The fund at any time may do any of the following:
- (a) Authorize access to relevant information by professional discipline agencies or law enforcement authorities.
  - (b) Release statistical information that does not disclose the identity of the attorney or the claimant.

(c) Use any information in its possession to pursue its subrogation rights.

**SCR 12.12 Reimbursement from the fund is discretionary.**

The fund's decision regarding payment of claims under ss. 12.08 and 12.09 is discretionary. Any such decision of the fund is not appealable

## SCR 12 SAMPLE FORMS

STATE OF WISCONSIN  
Civil Division

CIRCUIT COURT

CCCC COUNTY

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**In the Matter of:**

**ORDER  
TRUSTEE ATTORNEY**

**AAAA,**

**Deceased.**

**Case No.** \_\_\_\_\_

---

The matter is before the court for hearing on a petition to appoint a trustee attorney (trustee) pursuant to Wisconsin Supreme Court Rules (SCR) 12.03; Sole practitioners; death or disappearance. The petition states that xx, who was a sole practitioner, died and it is necessary to wind up his/her practice.

The court finds that no satisfactory arrangements have been made to wind up xx's practice. Therefore, it is necessary to appoint a trustee attorney for that purpose.

NOW THEREFORE, IT IS ORDERED, that:

1. YY is appointed trustee and shall do all the following:
  - a. Enter xx's office;
  - b. Protect the clients' rights, files and property;
  - c. Notify all clients being represented in pending matters of the appointment of the trustee as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, the trustee may act as interim counsel subject to ¶ 2 d, below;
  - d. Deliver client files and property to the clients upon their request;
  - e. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and

expenses; and

- f. Assist and cooperate with xx's personal representative, special administrator or other representative of the estate in the termination or sale of the practice under SCR 20:1.17.
2. The trustee or his/her law firm shall;
  - a. Not serve in any other capacity in the administration of xx's estate;
  - b. Be compensated from the assets of the estate for his/her professional services and reasonable and necessary expenses;
  - c. Be eligible to be a purchaser of the law practice under SCR 20:1.17; and
  - d. Not be permitted to act as successor attorney except and until the trustee becomes a purchaser of the law practice under SCR 20:1.17.
3. xx's estate shall be liable for the trustee's compensation and expenses ordered above;
4. The trustee shall report to the court and file an accounting at least every 60 days until the winding up of the practice is completed; and
5. Upon completion of the winding up of the practice the trustee shall petition the court to be discharged as trustee.

Dated: \_\_\_\_\_

By the Court:

CC: Office of Lawyer Regulation



STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

*Confidential*

AFFIDAVIT OF BBBB IN  
SUPPORT OF PETITION FOR  
APPOINTMENT OF TRUSTEE  
ATTORNEY

AAAA,

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

STATE OF WISCONSIN    )  
  ) ss.  
\_\_\_\_\_ COUNTY    )

**BBBB** being first duly sworn on oath, state as follows:

I am [licensed to practice law in the State of Wisconsin] or [an interested person in the matter of Attorney AAAA].

Attorney AAAA practiced law in CCCC County. Attorney AAAA has a medical incapacity. No satisfactory arrangements have been made to continue Attorney AAAA's practice.

*If desired, insert additional factual allegations, such as a description of AAAA's medical condition or other relevant information:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of, 20 \_\_\_\_.

By: \_\_\_\_\_

**BBBB**

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**NAME OF NOTARY**

Notary Public, State of Wisconsin

My commission Expires: \_\_\_\_\_

STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

*Confidential*

NOTICE OF SCR 12.02  
HEARING

AAAA,

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_

PLEASE TAKE NOTICE that The Honorable **NAME OF JUDGE** will conduct a SCR 12.02 hearing in the above matter on **DATE** at **TIME** in Room **###** at the CCCC County Courthouse, **ADDRESS**.

The hearing results from the filing of a Petition for Appointment of Trustee Attorney, attached hereto.

The issues at the hearing are whether Attorney **AAAA** has a medical incapacity and whether no other satisfactory arrangements have been made to assist Attorney **AAAA** in the matter of his/her law practice, in order to determine whether a trustee attorney shall be appointed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**BBBB**

State Bar No. \_\_\_\_\_

**Address**

In the Matter of:

ORDER APPOINTING  
TRUSTEE ATTORNEY

**AAAA**,

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

---

Upon all records, files and proceedings had herein, including a Petition for Appointment of Trustee Attorney and a properly – noticed hearing held on **[DATE]**, and upon the Court’s finding that Attorney **AAAA** has a medical incapacity and that no other satisfactory arrangements have been made to assist Attorney **AAAA** in the matter of his/her law practice;

IT IS HEREBY ORDERED:

The Petition for the Appointment of Trustee Attorney is granted;

**DDDD**, an attorney licensed to practice law in the State of Wisconsin, is hereby appointed as Trustee Attorney pursuant to SCR 12.02;

Attorney **DDDD** shall enter the offices of Attorney **AAAA** and do all the following:

- a. Protect the clients' rights, files and property.
- b. Notify all clients being represented in pending matters of the appointment of the attorney as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, the trustee attorney may act as interim counsel, subject to SCR 12.02(1)(f)4.
- c. Deliver client files and property to the clients upon their request.
- d. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
- e. Assist and cooperate with Attorney **AAAA** in the suspension, termination or wind up of his/her practice.

Attorney **DDDD** and his or her law firm shall:

- a. Not serve in any other capacity as counsel for the assisted attorney or his or her family.
- b. Be compensated from any assets generated in connection with his or her efforts for his or her professional services and reasonable and necessary expenses.
- c. Be eligible to be a purchaser of the law practice under SCR 20:1.17.
- d. Not be permitted to act as successor attorney except and until the trustee attorney becomes a purchaser of the law practice under SCR 20:1.17.

SCR 12.02 is attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:

Honorable \_\_\_\_\_  
Circuit Court Judge

cc: Office of Lawyer Regulation

STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

*Confidential*

AAAA,

**PETITION FOR APPOINTMENT  
OF TRUSTEE ATTORNEY**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

---

NOW COMES **BBBB**, and petitions the CCCC County Circuit Court for appointment of a trustee attorney over the law practice of Attorney **AAAA**, pursuant to SCR 12.02.

Attorney **AAAA** practiced law in CCCC County. Attorney **AAAA** has a medical incapacity and no satisfactory arrangements have been made to assist Attorney **AAAA** to continue his/her practice.

This motion is supported by the affidavit attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**BBBB**

State Bar No. \_\_\_\_\_

**Address**

STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

AAAA,

**AFFIDAVIT OF BBBB IN SUPPORT  
OF PETITION FOR APPOINTMENT  
OF TRUSTEE ATTORNEY**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

STATE OF WISCONSIN )  
 ) ss.  
\_\_\_\_\_ COUNTY )

**BBBB** being first duly sworn on oath, state as follows:

I am [licensed to practice law in the State of Wisconsin] or [an interested person in the matter of Attorney AAAA].

Attorney AAAA practiced law in CCCC County. Attorney AAAA died. No satisfactory arrangements have been made for the winding up of Attorney AAAA's practice.

**If desired, insert additional factual allegations or other relevant information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**BBBB**

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**NAME OF NOTARY**

Notary Public, State of Wisconsin

My commission Expires: \_\_\_\_\_

STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

**NOTICE OF SCR 12.03(1) HEARING**

**AAAA,**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

---

PLEASE TAKE NOTICE that The Honorable **NAME OF JUDGE** will conduct a SCR 12.03(1) hearing in the above matter on **DATE** at **TIME** in Room **###** at the CCCC County Courthouse, **ADDRESS**.

The hearing results from the filing of a Petition for Appointment of Trustee Attorney, attached hereto.

The issue at the hearing is whether satisfactory arrangements have been made to wind up the lawpractice of Attorney **AAAA**, in order to determine whether a trustee attorney shall be appointed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**BBBB**

State Bar No. \_\_\_\_\_

**Address**

In the Matter of:

**ORDER APPOINTING TRUSTEE ATTORNEY**

AAAA,

**Attorney at Law**

Case Code 30703

Case No. \_\_\_\_\_

---

Upon all records, files and proceedings had herein, including a Petition for Appointment of Trustee Attorney and a properly – noticed hearing held on [DATE], and upon the Court's finding that Attorney AAAA is deceased and that no other satisfactory arrangements have been made for the winding up of Attorney AAAA's law practice;

**IT IS HEREBY ORDERED:**

The Petition for the Appointment of Trustee Attorney is granted;

**DDDD**, an attorney licensed to practice law in the State of Wisconsin, is hereby appointed as Trustee Attorney pursuant to SCR 12.03(1);

Attorney **DDDD** shall enter the offices of Attorney **AAAA** and do all the following:

- a. Protect the clients' rights, files and property.
- b. Notify all clients being represented in pending matters of the appointment of the attorney as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, the trustee attorney may act as interim counsel, subject to SCR 12.03(1)(c)4.
- c. Deliver client files and property to the clients upon their request.
- d. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
- e. Assist and cooperate with the deceased attorney's personal representative, special administrator or other representative of the deceased attorney's estate in the termination or sale of the law practice under SCR 20:1.17.

Attorney **DDDD** and his or her law firm shall:

- a. Not serve in any other capacity in the administration of the deceased attorney's estate.
- b. Be compensated from the assets of the estate for his or her professional services and reasonable and necessary expenses.
- c. Be eligible to be a purchaser of the law practice under SCR 20:1.17.
- d. Not be permitted to act as successor attorney except and until the trustee attorney becomes



a purchaser of the law practice under SCR 20:1.17.

SCR 12.03 is attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

Honorable \_\_\_\_\_  
Circuit Court Judge

cc: Office of Lawyer Regulation

In the Matter of:

**PETITION FOR APPOINTMENT  
OF TRUSTEE ATTORNEY**

**AAAA,**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

NOW COMES **BBBB**, and petitions the CCCC County Circuit Court for appointment of a trustee attorney over the law practice of Attorney **AAAA**, pursuant to SCR 12.03(1).

Attorney **AAAA** practiced law in CCCC County. Attorney **AAAA** has died and no satisfactory arrangements have been made for the winding up of Attorney **AAAA**'s law practice.

This motion is supported by the affidavit attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**BBBB**

State Bar No. \_\_\_\_\_

**Address**

STATE OF WISCONSIN

CIRCUIT COURT

CCCC COUNTY

In the Matter of:

AAAA,

**AFFIDAVIT OF BBBB IN SUPPORT  
OF PETITION FOR APPOINTMENT  
OF TRUSTEE ATTORNEY**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

STATE OF WISCONSIN )  
  )  
\_\_\_\_\_COUNTY        )

**BBBB** being first duly sworn on oath, state as follows:

I am [licensed to practice law in the State of Wisconsin] or [an interested person in the matter of Attorney AAAA].

Attorney AAAA practiced law in CCCC County. Attorney AAAA has abandoned his/her practice for than 21 days. No other satisfactory arrangements have been made to continue Attorney AAAA's practice.

**If desired, insert additional factual allegations or other relevant information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**BBBB**

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**NAME OF NOTARY**

Notary Public, State of Wisconsin

My commission expires: \_\_\_\_\_

In the Matter of:

**NOTICE OF SCR 12.03(2) HEARING**

**AAAA,**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

---

PLEASE TAKE NOTICE that The Honorable **NAME OF JUDGE** will conduct a SCR 12.03(2) hearing in the above matter on **DATE** at **TIME** in Room **###** at the CCCC County Courthouse, **ADDRESS**.

The hearing results from the filing of a Petition for Appointment of Trustee Attorney, attached hereto.

The issue at the hearing is whether Attorney **AAAA** has abandoned his/her law practice and no other satisfactory arrangements have been made to continue the practice, in order to determine whether a trustee attorney shall be appointed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

**BBBB**

State Bar No. \_\_\_\_\_

**Address**

In the Matter of:

**ORDER APPOINTING TRUSTEE ATTORNEY**

AAAA,

**Attorney at Law**

Case Code 30703

Case No. \_\_\_\_\_

Upon all records, files and proceedings had herein, including a Petition for Appointment of Trustee Attorney and a properly – noticed hearing held on [DATE], and upon the Court's finding that Attorney AAAA has abandoned his/her law practice and that no other satisfactory arrangements have been made to continue the practice;

**IT IS HEREBY ORDRED:**

The Petition for the Appointment of Trustee Attorney is granted;

**DDDD**, an attorney licensed to practice law in the State of Wisconsin, is hereby appointed as Trustee Attorney pursuant to SCR 12.03(2);

Attorney **DDDD** shall enter the offices of Attorney AAAA and do all the following:

- a. Protect the clients' rights, files and property.
- b. Notify all clients being represented in pending matters of the appointment of the attorney as promptly as possible, personally or by mail, and advise them to seek counsel of their choice. At the request of a client, the trustee attorney may act as interim counsel, subject to SCR 12.03(2)(c)3.
- c. Deliver client files and property to the clients upon their request. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses.
- d. Collect any moneys and safeguard any assets in the office of the absent attorney and hold the moneys and assets in trust pending their disposition upon order of the court.

Attorney **DDDD** and his or her law firm shall:

- a. Not serve in any representative capacity for the absent attorney or his or her family.
- b. Be compensated from the assets collected for his or her professional services and reasonable and necessary expenses.
- c. Not be permitted to act as successor attorney.

SCR 12.03 is attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:

Honorable \_\_\_\_\_  
Circuit Court Judge

cc: Office of Lawyer Regulation

In the Matter of:

**PETITION FOR APPOINTMENT  
OF TRUSTEE ATTORNEY**

**AAAA,**

Attorney at Law,

Case Code 30703

Case No. \_\_\_\_\_

---

NOW COMES **BBBB**, and petitions the CCCC County Circuit Court for appointment of a trustee attorney over the law practice of Attorney **AAAA**, pursuant to SCR 12.03(2).

Attorney **AAAA** practiced law in CCCC County. Attorney **AAAA** has abandoned his/her law practice and no other satisfactory arrangements have been made to continue the practice.

This motion is supported by the affidavit attached hereto.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_.

\_\_\_\_\_  
**BBBB**

State Bar No. \_\_\_\_\_

**Address**

# After All, You Are Only Human: The Solo Practitioner's Handbook for Disability and Death

Issued by: The Solo and Small Firm, General Practice Section of the State Bar of Wisconsin

Presented by:

Matthew Beier, Senior Vice President of WILMIC  
Atty. Thomas Schumacher, Bakke Norman Law Offices, S.C.

## Why this book...*After All, You Are Only Human?*

- 73% of Wisconsin lawyers work in small firms.
- Solo and small firm lawyers are in need of guidance about handling death, disability and personal emergencies.
  - ❖ Files/materials left behind after an attorney dies;
  - ❖ Clients turn to other local lawyers/courts/family members for help.
- Resources and guidance to answer the "What if...?" questions associated with death, disability and personal emergencies.





# Planning Ahead is Never a Bad Idea

➤ Practice what you preach!

➤ Basic Outline:

1. Select an Outsider;
2. Execute authorizing documents;
3. Gather information.



## Selecting an Outside Helper



➤ SCR 20:1.3 – Diligence, Comment [5] –

*To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.*

➤ State Bar of Wisconsin's Succession Planning Registry

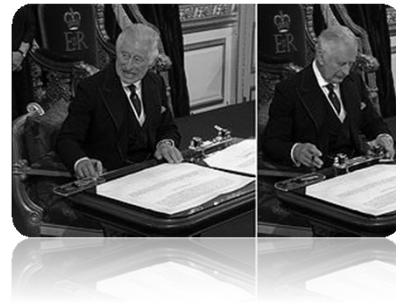
# Execute the Documents

## ➤ SCR 20:5.4 Professional independence of a lawyer

❖ Allows for the sale of the practice and for a purchasing lawyer to pay the purchase price to the estate or other estate representatives, but does not allow operation of the firm by a nonlawyer, such as a spouse.

❖ Helpful documents:

- ✓ Will that includes a provision governing management of your law practice after you die;
- ✓ General Power of Attorney (for personal, non-law practice areas);
- ✓ Durable, Limited and Springing Power of Attorney to Manage Law Practice while you are still alive but incapacitated;
- ✓ Agreement to Close Law Practice.



# The Will Provsion



- The lawyer who dies while still practicing law places his or her heirs and beneficiaries in a very precarious and unique situation.
- SCR 20:5.4(d)(1). The rule only permits the non-lawyer to hold stock after the lawyer's death, not manage the practice or actually practice law. Only a lawyer may sell or purchase a law practice. SCR 20:1.17.
- Best practice would be to add a clause to your Will that retains the practice as an Estate asset but directs the Personal Representative to engage a specifically named attorney to either 1) sell the practice to a pre-determined attorney; or, 2) manage the practice until it can be wound-up or sold.
- While the Practice is an income-earning asset of the Estate, clients cannot be billed for tasks necessary to comply with both SCR 20:1.16 and SCR 20:1.17.

## The General Durable Power of Attorney



- Durable Power of Attorney may be effective immediately and permits the Attorney to manage the affairs of the person signing the document (the Principal).
- Your general Power of Attorney should NOT include the power to manage your law practice. Your general power of attorney should only have powers over your personal matters, not your professional ones.

## The Durable, Limited and Springing Power of Attorney

- The Durable, Limited and Springing Power of Attorney Power addresses management of your firm. Due to rules governing confidentiality, loyalty, and conflicts of interest, you should only permit an outsider access to your practice in an emergency.
- Wis.Stat. §244.02(7) determines whether you are "incapacitated."

## The Fee Agreement

Add language to your fee agreement with the client that allows you to have other attorneys fill in.



## The One Left Behind – Tips for Managing or Selling Another Attorney's Practice

- Involving the Courts when a Sole Practitioner Dies or Becomes Disabled
  - Appointment as the Trustee attorney under Chapter 12 provides clear authority pursuant to Court order, but does place certain limitations and restrictions on the actions of the Trustee attorney that may limit or conflict with the powers granted under a Durable, Limited, and Springing Power of Attorney
  - SCR 12.03(c)<sup>1</sup> includes a prohibition against acting as a successor attorney until the Trustee becomes a purchaser of the practice as provided by SCR 20:1.17

## The One Left Behind – Tips for Managing or Selling Another Attorney's Practice – cont.

- A Checklist for the Outsider
  - ✓ Notify courts, attorneys, clients, insurance carriers, the State Bar and the Office of Lawyer Regulation.
  - ✓ Inventory the office, including client files.
    - Develop or obtain a list of clients.
    - Determine if the Outsider can continue the representation.
    - Manage the finances.
    - Calendar.
    - E-mail Auto Response.
  - ✓ Closing the Practice
    - Inventory and value what can be sold.
    - Arrange for transfer of files and items.
    - Give former clients an opportunity to retrieve their property.
    - Collect payments, make final payments, and prepare tax documents.
    - Other miscellaneous wind-up work.



## What Information Will the Outsider Need

- First and Foremost, the Outsider needs to know that you have chosen them for this role.
- Share the documents you have prepared.
- Upon death or disability – LOTS of information:
  - Bank account numbers/balances
  - Client information
  - Access to computers/software
  - Passwords
  - Document shredding vendor
  - Etc., etc.,... (See Form 8)
- Useful tip: Recreate your days/weeks/months/year to show the Outsider *how* you practice.



## Ethical Rules Regarding Informed Consent

- SCR 20:1.2 provides that a client always has the right to choose their attorney and have input into the representation.
- SCR 20:1.0(f) defines informed consent as follows:

“‘Informed consent’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”
- Best practice is to notify the client as soon as possible and give them the choice to continue representation or select a new attorney.



# Malpractice Insurance Issues

- Maintaining malpractice insurance is a best practice and can protect not only you but also your Estate.
- The commonly used term of "tail coverage" refers to what is technically known as an "extended reporting period endorsement" (ERP). The ERP endorsement simply extends the time in which someone can make a claim.
- The disabled lawyer should make sure the Outsider who is in place as his or her backup has their own malpractice insurance coverage. Generally, the disabled lawyer's carrier will continue to insure that lawyer as long as they have an active policy in place. But both should be covered by separate policies.
- Tell your carrier who your Outsider is in the event of a death/disability, it helps reduce the chances that a malpractice claim would occur.



## Be Prepared.

