

**Professional Responsibility
PRMCLE Meeting
DuPage Judicial Center – Attorney Resource Center
4/16/18**

11:45 AM – Noon

Welcome/Introductions

Dexter Evans, Section Vice Chair

A few words from Mosea Harris, ISBA Mutual – Today's Lunch Sponsor



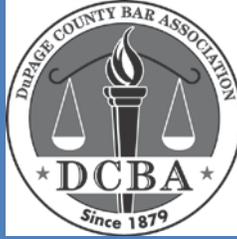
Noon – 1:00 PM

Program

Surviving a Setback/Preparing Your Practice for the Unexpected
John Pcolinski - Guerard, Kalina & Butkus, Brigid Duffield - Law Office of Brigid A. Duffield PC, & Chuck Roberts - Roberts PC

***Chuck Roberts** is the Principal of Roberts PC in Wheaton where he practices a mix of family law and civil litigation. Admitted to Illinois in 1983, Chuck has served as a past-president of the DCBA and the DuPage County Bar Foundation, is a Fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers, is frequently appointed as a GAL and continues to serve as the senior member of the ARDC Review Board by Illinois Supreme Court Appointment*

***John Pcolinski** is a partner in the law firm of Guerard, Kalina & Butkus, licensed in Arizona (1986) and Illinois (1987) and is a current member of the DCBA Board of Directors. He participates as a member of several standing committees and sections. John is also current Vice Chair of the Illinois Supreme Court Committee on Character and Fitness for the*



Second District and his practice is concentrated in Commercial and Chancery Litigation, including contested guardianships

*Please see attached for **Brigid Duffield's** bio*

John, Brigid & Chuck share their perspectives and personal experiences with their own unexpected events and how they and their practices survived and thrived. They will also share some practical and professional tips you can use should this happen to you!

Next Meeting: 5/21/18 – “Hey, Can You Cover For Me?” – ISBA Mutual will close our year with a presentation on contract attorneys and impact on insurance coverage

DCBA Events: 4/19/18 – Happy Hour – Rock Bottom Brewery - Warrenville

4/23/18 – Inside the Super Lawyers Selection Process

4/26/18 – Lawyers Lending a Hand 4th Annual Blood Drive

4/28/18 – DBF Human Race 2018

5/3/18 – 2018 Law Day Luncheon

View & Print All CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)

DCBA OnDemand CLE is Now Powered by IICLE The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under “Legal Community” →OnDemand CLE →Online CLE Catalog



Brigid A. Duffield

The Law Office of Brigid A. Duffield, P.C.

Areas of Concentration

Family Law

Divorce Mediation

Probate Mediation – End of Life Conversations

Divorce Arbitration

Collaborative Law

Real Estate – Residential Sale and Purchase

Admitted to Practice

Illinois and U.S. District Court &

Northern District Illinois, 1984

United States Supreme Court, 2005

Education

The John Marshall Law School, 1984

Northern Illinois University, 1976

Additional Information

Brigid has over thirty years experience in matters involving divorce, child custody and visitation, conflict resolution, financial business disputes, real estate and probate mediation.

Brigid was approved in 2000 by the Association of Conflict Resolution as a trainer of the 40 hour Family Law Mediation Training, required by many jurisdictions. In 2008, Brigid became a MCLE provider by the MCLE Board of the Illinois Supreme Court. Through the Illinois Department of Financial and Professional Regulation, Brigid is licensed to offer continuing education to Marriage and Family Therapists.

In 2009, she authored and published, *“The No BS Divorce” Secrets of a Divorce Attorney*, *“The No BS Divorce” Workbook*, and *“The No BS Divorce” Mediation Training Manual*, which reveal the how-to secrets of getting a divorce settlement which sustains the test of time, improves relationships inside and out of the court-house, preserves the family resources and is quicker and less expensive.

Brigid is the current Chair of the ARDC Hearing Board.

The Law Office of Brigid A. Duffield, P.C.

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630-221-9300

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www.brigidduffield.com

No BS Secrets

Colleagues & Family Should Know

When Facing a Temporary or Permanent Disability...OR Death

1. It's gonna happen... no matter what you do! Create a succession plan before you need one.
2. Everyone wants to fight over you...Really!!! Clearly define the Who, What, When (well maybe not the when!) of your succession plan.
3. Everyone is the Boss of You...So have a conversation with your designated successor attorney and make sure that he/she is in agreement with the plan.
4. You are not organized...enough! Have client files and documents prepared to allow your cases to be transferred to the designated successor attorney efficiently.
5. Lots of people want your money! Ensure that someone is available to pay on-going bills and office expenses in your absence.
6. Not everyone should know everything about you, even if they think they do! Determine who you will tell regarding your temporary or permanent disability and how you want the information communicated to other individuals and if possible, the story that goes into the universe or at least our small community.
7. No one wants to really learn what you do or how you do it. Make it easy for someone to step in. Create an Office Manual that details the office procedures and informs the successor attorney of file locations and passwords.
8. Everyone will love my clients like I do...really??? I don't even like them some days. Determine what files, if any, you will keep during your temporary disability and which attorney personality is a good fit for your client.
9. Your family does not know all your wishes. Update your Will and include information on what is to happen to the Law Office at your death and ensure it aligns with your succession plan.



"And another thing..."

Immediate Action Points:

1. _____

Deadline _____ Date Completed: _____

2. _____

Deadline _____ Date Completed: _____

3. _____

Deadline _____ Date Completed: _____

Steps I can take:

1. _____

2. _____

3. _____

Resources Needed:

1. _____

2. _____

3. _____

Contacts/Networks:

1. _____

2. _____

3. _____

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756(5)

(5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be \$121. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule and submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Rule 790 *et seq.* If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(3) of this rule. Inactive status under this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

756(6)

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status. If the lawyer seeks to register as active, he or she must also submit, as part of registering, verification from the Director of MCLE of the lawyer's compliance with MCLE requirements as set forth in Rule 790 *et seq.*

756(8)

(8) Permanent Retirement Status. An attorney may file a petition with the Court requesting that he or she be placed on permanent retirement status. All of the provisions of retirement status enumerated in Rule 756(a)(6) shall apply, except that an attorney who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed under paragraph (k) of this rule.

(A) The petition for permanent retirement status must be accompanied by a consent from the Administrator, consenting to permanent retirement status. The Administrator may consent if no prohibitions listed in subparagraph (a)(8)(B) of this rule exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied.

(B) An attorney shall not be permitted to assume permanent retirement status if:

1. there is a pending investigation or proceeding against the attorney in which clear and convincing evidence has or would establish that:

a. the attorney converted funds or misappropriated funds or property of a client or third party in violation of a rule of the Illinois Rules of Professional Conduct;

b. the attorney engaged in criminal conduct that reflects adversely on the attorney's honesty in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct; or

c. the attorney's conduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property

rights) to a client or other person, unless restitution has been made; or

2. the attorney retains an active license to practice law in any jurisdictions other than the State of Illinois.

(C) If permanent retirement status is granted, any pending disciplinary investigation of the attorney shall be closed and any proceeding against the attorney shall be dismissed. The Administrator may resume such investigations pursuant to Commission Rule 54 and may initiate additional investigations and proceedings of the attorney as circumstances warrant. The permanently retired attorney shall notify other jurisdictions in which the he or she is licensed to practice law of his or her permanent retirement in Illinois. The permanently retired attorney may not reactivate a license to practice law or obtain a license to practice law in any other jurisdiction.

RULE 757 Transfer to Disability Inactive Status upon Involuntary Commitment or upon Judicial Determination of Legal Disability Because of Mental Condition

(a) If an attorney admitted to practice in this State has been, because of mental condition, judicially declared to be a person under legal disability or in need of mental treatment, or has been involuntarily committed to a hospital on such grounds, the Court shall enter an order transferring that attorney to disability inactive status until the further order of the court. If the Administrator files a motion to transfer an attorney to disability inactive status pursuant to

this rule, the Administrator shall serve the motion upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(b) Any disciplinary proceeding which may be pending against the attorney shall be stayed while he is on disability inactive status.

(c) No attorney transferred to disability inactive status may engage in the practice of law until restored to active status by order of the Court.

(Adopted March 30, 1973, effective April 1, 1973; title amended September 8, 1975, effective October 1, 1975; amended May 28, 1982, effective July 1, 1982; amended June 29, 1999, effective November 1, 1999; amended Dec. 28, 2017, eff. Feb. 1, 2018.)

**RULE 758 Mental Disability or Addiction to
Drugs or Intoxicants**

(a) **Petition.** If the Inquiry Board has reason to believe that an attorney admitted to practice in this State is incapacitated from continuing to practice law by reason of mental infirmity, mental disorder, or addiction to drugs or intoxicants, the Administrator shall file a petition with the Hearing Board requesting a hearing to determine whether the attorney is incapacitated and should be transferred to disability inactive status pending the removal of the disability, or be permitted to continue to practice law subject to conditions imposed by the court.

(b) **Hearing and Review Procedure.** The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases. The Administrator and the attorney may consent to a transfer to disability inactive status under the procedure set forth in Rule 762(a).

(c) **Transfer to Disability Inactive Status.** If the court determines that the attorney is incapacitated from continuing to practice law, the court shall enter an order transferring the attorney to disability inactive status until further order of the court. The court may impose reasonable conditions upon an attorney's continued practice of law warranted by the circumstances.

(d) **Stay of Disciplinary Proceedings.** Disciplinary proceedings pending against the attorney shall be stayed while the attorney is on disability inactive status.

(e) **Practice of Law Prohibited.** No attorney transferred to disability inactive status may engage in the practice of law until restored to active status by order of the court.

(Adopted March 30, 1973, effective April 1, 1973; title amended September 8, 1975, effective October 1, 1975; amended June 1, 1984, effective July 1, 1984; amended October 16, 1990, effective November 1, 1990; amended June 29, 1999, effective November 1, 1999.)

RULE 759 Restoration to Active Status

(a) **Petition.** An attorney transferred to disability inactive status under the provisions of Rule 757, 758, or, prior to November 1, 1999, pursuant to Rule 770 may file a petition with the court for restoration to active status. The petition must be accompanied by verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.* and verification from the Administrator that the attorney has reimbursed the Client Protection Program for all payments arising from the petitioner's conduct pursuant to Rule 780(e). The petition shall be served on the Administrator, who shall have 21 days to answer the petition. If the Administrator consents or fails to file exceptions in the answer to the petition, the court may order that the petitioner be restored to active status without a hearing. If the Administrator excepts to the petition in the answer, the petition and answer of the Administrator shall be referred to the Hearing Board which shall hear the matter.

(b) **Hearing and Review Procedure.** The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.

(c) **Disposition.** The court may impose reasonable conditions upon an attorney's restoration to active status as may be warranted by the circumstances. A restoration ordered under this rule shall be effective seven days after entry of the court's order allowing the petition provided that the petitioner produces to the Administrator within the seven days verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.*

(d) **Resumption of Disciplinary Proceedings.** If an attorney is restored to active status, disciplinary proceedings pending against the attorney may be resumed.

(Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended June 1, 1984, effective July 1, 1984; amended October 16, 1990, effective November 1, 1990; amended June 29, 1999, effective November 1, 1999; amended September 29, 2005, effective immediately; amended February 9, 2015, eff. Immediately; amended June 22, 2017, eff. July 1, 2017.)

RULE 760 Appointment of Medical Experts

(1) In any proceeding under Rule 757, 758, or 759 upon motion of the Administrator or the attorney, the Court may order a mental or physical examination of the attorney. Such examination shall be conducted by a member of a panel of physicians chosen for their special qualifications by the Administrative Office of the Illinois Courts.

(2) Service of the motion shall be made in any manner in which service of process is authorized by Rule 765(a).

(3) The examining physician shall prepare a report of his examination and copies of the report shall be given to the Court, the Hearing Board, the Administrator, and the attorney.

(4) The Administrator, the attorney or the Hearing Board may call the examining physician to testify. A physician so called shall be subject to cross-examination.

(5) The cost of the examination and the witness fees of the physician if called to testify, shall be paid from the Disciplinary Fund.

(Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended March 19, 1997, effective April 15, 1997; amended December 16, 2010, effective immediately; amended Dec. 28, 2017, eff. Feb. 1, 2018.)

**RULE 5.1 Responsibilities of Partners,
Managers, and Supervisory
Lawyers**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(Adopted July 1, 2009, effective January 1, 2010.)

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) engage in conduct that is prejudicial to the administration of justice.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.

(g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.

(h) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission.

(i) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith.

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial

review has been exhausted.

(k) if the lawyer holds public office:

(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;

(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or

(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.

(Adopted July 1, 2009, effective January 1, 2010.)

COMMITTEE APPROVED FINAL DRAFT (030918)

RULE 781 DESIGNATED ATTORNEY REPRESENTATIVE IN THE EVENT OF DEATH, DISABILITY, OR PRACTICE ABANDONMENT

(a) Purpose. The purpose of this Rule is to provide a designated representative to act on a limited and short term basis to protect the rights and interests of clients in the event of their attorney's death, disability, disappearance, practice abandonment, or any other similar event.

(b) Designation. Attorneys registering as active under Rule 756 who are engaged in the private practice of law must designate each year during the registration process: (1) an active Illinois attorney in good standing, an Illinois law firm, or an established state, county, or municipal bar association that includes active Illinois attorneys, to serve as the registering attorney's designated representative for the purposes of carrying out the authorized activities set out below; or (2) certify that they have identified a designated representative capable of carrying out the authorized duties listed below in appropriate will, trust, partnership, corporate documents, or succession plan.

(c) Practice Information. In addition to the records required to be maintained under Rule 769 relating to client identity and financial records, all attorneys registering as active who are engaged in the private practice of law must maintain a list of passwords and other security protocols necessary to access the attorney's electronic business files, calendar, and other law office related records in a location known and accessible by the attorney's designated representative or office personnel.

(d) Client Protection.

(1) The designated representative shall be bound by the obligations of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired during the course of performing the authorized activities under this Rule.

(2) While performing the authorized activities under this Rule, the designated representative may not examine any documents or acquire any information that raise real or potential conflicts of interest with the designated representative's client(s). Should any material information be acquired inadvertently, the designated representative must protect the privacy interests of the disabled, deceased, disappeared, or abandoned attorney's clients by promptly ceasing any further review or examination of files and seeking out another lawyer to provide notice to the client.

(3) Nothing in this Rule shall restrict a client from seeking and retaining substitute counsel for their legal matter.

(e) Designated Representative Authority. Whenever an attorney dies, abandons a practice, disappears, suffers an unanticipated leave of absence due to military service, or becomes disabled due to a catastrophic illness or injury, the attorney's designated representative is authorized to:

(1) discuss with the attorney's office personnel, family members, or other attorney representatives (such as a guardian or executor) to obtain information as may be necessary to accomplish the purposes of this Rule;

(2) take reasonable steps to secure the lawyer's files, office, client property, and accounts;

(3) review the lawyer's files, calendar, and records to identify litigation or time sensitive matters;

(4) notify clients of attorney's death or disability, including making arrangements for the return of client files or obtaining substitute counsel;

(5) notify courts and other tribunals in which client matters are pending, and seek stays of proceedings as may be warranted to preserve client rights or interests;

(6) serve as successor signatory for any client trust or operating accounts maintained by the lawyer;

(7) if necessary, utilize the attorney's operating accounts to manage the office, including retention of staff or others pending sale or closure;

(8) if necessary, audit and distribute client funds held in trust;

(9) if necessary to carry out any of the authorized activities hereunder, a designated representative may seek an order from the chief judge of the judicial circuit in which the attorney practiced confirming the death, disability, disappearance, or practice abandonment of the attorney;

(10) if necessary, seek the appointment of a receiver under Rule 776;

(11) consult with the attorney's office personnel, family members, or other representatives (such as a guardian or executor) as may be appropriate to wind down, sell, or close the attorney's practice;

The designated representative's role is temporary and limited. The designated representative is authorized, but not required, to undertake any or all of the above activities.

(f) Liability of Designated Representative. Based upon the designated representative's limited and temporary role, a designated representative serving pursuant to this Rule shall:

(1) not be regarded as having an attorney-client relationship with the clients of the disabled, absent or deceased attorney;

(2) have no liability to the clients of the disabled, absent, or deceased attorney except for injury to such clients caused by intentional, willful or gross neglect in the performance of the authorized activities under this Rule;

(3) except as herein provided, be immune to separate suit brought by or on behalf of the disabled, absent, or deceased attorney;

(4) not be required to file an appearance in any pending matter before a tribunal in order to provide notice to the court or opposing counsel of an attorney's death, disability, disappearance, or abandonment of practice.

(g) Designated Representative Unwilling or Unable to Serve. In the event a designated representative is unwilling or unable to serve, or for any reason cannot carry out the authorized activities under this Rule, the designated representative or office personnel or family member of the disabled, disappeared, or deceased attorney may seek out any Illinois active status lawyer to serve as the designated representative. Alternatively, with the consent of the disabled, disappeared, or deceased attorney's designated representative or family member, any lawyer member of the attorney's firm, partnership, or other formal business entity may serve as designated representative. If no designated representative can be identified, Supreme Court Rule 776 (Appointment of Receiver in Certain Cases) becomes

applicable and the presiding judge in the judicial circuit in which the lawyer maintained a practice may appoint a receiver or designated representative as appropriate.

(h) Succession Plan. In the event an attorney to whom this Rule applies has made adequate written provision for the protection of his or her clients through a succession plan including the identification of a designated representative, corporate resolutions, partnership agreements, estate documents, or otherwise that complies with this Rule, the terms and provisions of such documents shall govern the disposition of the attorney's law practice. To the extent appropriate, the authorizations and protections provided to the designated representative under this Rule shall apply to the identified representative under such plans and documents.

Adopted _____, effective _____.

Committee Comments

The purpose of this Rule is to ensure that a lawyer's clients are not prejudiced in the event of a lawyer's unanticipated death, disability, or other event that makes a lawyer's continued representation of a client reasonably unlikely or impossible. It is limited and designed to provide for common sense, short-term triage measures to protect a lawyer's clients and does not envision the takeover of a practice. Rather, it can fill the gap between the time of an unanticipated event and a potential court supervised disposition of a lawyer's business assets, such as through the probate process, succession plan, appointment of a receiver, or other plan. It may also have the salutary effect of providing guidance to nonlawyer staff or family members who may not be qualified to assess the state of the lawyer's law practice or answer client questions. While this Rule is particularly important to solo practitioners, it has benefits for lawyers in all size practices.

The authorized activities under this Rule are limited, and service as a designated representative is correspondingly limited and not meant to be burdensome. Nevertheless, each situation may be different. The designated representatives may serve with or without compensation. There is no prohibition on receiving reasonable compensation for performing the tasks contemplated under this Rule. In complying with this Rule, lawyers are encouraged to discuss and make arrangements, preferably in writing, with the designated representative for reasonable compensation or parameters on the exercise of authority.

As noted, the purpose of this Rule is to protect client interests by establishing a reasonable procedure and process for addressing the immediate needs of a practice in the event of a lawyer's unanticipated death, disability, or other event that makes a lawyer's continued representation of a client reasonably unlikely or impossible. The specific authority granted under this Rule should be limited to achieving that goal. The authority granted does not extend into perpetuity, but rather should be exercised reasonably, sparingly, timely, and concluded as quickly as possible. This Rule does not require nor authorize the designated lawyer to take over a practice, substitute himself or herself as the lawyer for a client (unless the client consents), or otherwise act on behalf of a client.

Compliance with this Rule should not end a lawyer's responsibility to his or her clients. While the Rule does not make it a mandatory requirement, attorneys registering as active under Rule 756 who are engaged in the private practice of law *should* prepare a detailed, and readily accessible, written succession plan specifying the steps to be taken in the event of their disability or death. See Illinois Rules of Professional Conduct 1.3, Comment [5]. A succession plan should identify a designated representative or representatives, include at a minimum, the authorities described in Rule paragraph (e), and provide the designated representative all the authority needed to carry out the plan. A succession plan should also document the information identified in this Rule including but not limited to: the location of records and client files, passwords and security protocols, bank account information, income information, office and equipment leases, utility information, and other day to day business information. Finally, a succession plan should authorize a designated representative(s) to: collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administrative tasks. While this Rule is intended to provide reasonable protections to clients in the event of an unanticipated event, it is not a substitute for the flexibility and detail that can be included in a formal succession plan.

Adopted _____, effective _____.

To: ISBA Special Committee on Succession and Transition Planning

Re: Comment re proposed Illinois Supreme Court “Succession” Rule 781

The notion that a lawyer in solo practice should designate another lawyer to review files and take protective action to prevent neglect of client matters in the event of the lawyer’s death or disability is currently reflected in Comment [5] to Rule 1.3 of the Illinois Rules of Professional Conduct. The proposed new “succession” Rule 781 would make that salutary admonition mandatory. (Presumably, if the proposed rule, or a similar rule, is adopted, then Comment [5] will be revised or replaced.) There are, however, some issues that should be addressed concerning the current (March 9, 2018) draft of the proposed “succession” rule.

First, the term “succession” may itself be a misnomer in this context. As noted in paragraph (d)(3) of the draft rule, clients have the right to choose successor counsel should the need arise. An attempt by a lawyer to designate successor counsel without the client’s informed consent would likely violate Illinois Rule 1.2(e) that prohibits a lawyer from delegating responsibility for a matter to another lawyer not in the same firm. The proposed draft rule, like the rules of other states cited in the committee memorandum, is focused on protecting clients of lawyers who may suddenly become unavailable. Because actual “succession” is ultimately a matter for clients to decide, a more appropriate alternative description might be considered, including those terms used in other states, e.g., “proxy” (Maine), “surrogate” (Indiana), or “inventory attorney” (Florida). A more accurate term might be “contingency” planning.

Second, the apparent scope of the proposed rule seems much broader than reasonably required. The current draft covers all lawyers “registering as active under Rule 756 who are engaged in the private practice of law.” This definition includes lawyers working in law firms and lawyers working in-house for business or non-profit organizations. Because the death or sudden disability of such lawyers is extremely unlikely to result in neglect of any client matter, there is no realistic need to require all those lawyers to submit “succession” plans. Indiana, for example, expressly limits its rule to lawyers in solo practice. The proposed definition also covers lawyers who may be registered in Illinois, but live and work outside the state (the 2016 ARDC Annual Report shows 30,315 lawyers – 32% of the total number registered – who reported a principal address outside Illinois). There would appear to be no Illinois client protection rationale to require “succession” plans from the thousands of lawyers who might be registered in Illinois, but live and work in another state.

Third, the proposed rule grants the “designated representative” broad powers to act without court appointment or supervision. In contrast, the rules of Indiana, Florida, and Maine require a court to appoint and/or supervise the lawyer appointed to protect the interests of clients of a deceased or disabled lawyer. These procedures provide public notice and judicial oversight. Unless and until a “designated representative” decides to seek court assistance for a particular purpose, the proposed new Illinois rule creates a system that is self-executing and essentially private.

Fourth, the proposed rule grants the “designated representative” broad prospective immunity. With respect to clients of the deceased or disabled lawyer, the “designated representative” can be liable only for “intentional, willful or gross neglect in the performance of the authorized activities” under the rule. And the “designated representative” is virtually immune from any action “brought by or on behalf of the disabled, absent, or deceased” lawyer, which would appear to include actions based on intentional misconduct. Thus, in most situations where the client, or the estate, of a deceased or disabled lawyer suffered damages from an act or omission of a “designated representative” under the proposed rule, neither the client nor the lawyer’s estate would have any viable remedy from a person acting without court appointment or supervision.

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