

**KENTUCKY BAR ASSOCIATION**  
**TASKFORCE**  
**ON**  
**CLOSED AND ABANDONED PRACTICES**

**Chair: George Long II**

**Committee Members:**

Bradford Breeding  
Justice Bill Cunningham  
Larry Deener  
Glenn Denton  
William G. Francis  
Jay Garrett  
Tommy Glover  
James Harris  
John Meyers  
Jerry Miniard  
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J. Stephen Smith  
Matthew Tierney  
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Christian Worth  
George Long II

## INTRODUCTION

There are many different reasons why a law practice closes, some are planned, for example – retirement, merging firms or entering public office, and others can be unplanned, such as an unexpected disability or death. The duties as a lawyer in each of these situations, however, are similar -- to protect the clients' interest. The forms and suggested procedures provided here are meant to assist lawyers in accomplishing a smooth and efficient transition that meets a lawyer's ethical obligations.

The attached (handbook) forms are designed to assist Kentucky attorneys who may be contemplating or actively involved in the closure of an existing law practice. While no single document or checklist can address all the possible questions or circumstances that an attorney will encounter in the process of closing his/her practice and/or another's practice, these forms/handbook attempt to address some of the basic guidelines/recommendations for an effective closure of one's practice. Included within this packet are sample letters to clients for both active and closed files, although there may be questions that may arise for which this packet provides no answer. Those thus involved in the closure of an existing law practice are encouraged to consult others who have experience in closing a practice.

Please note that the attached forms do not address a situation where a law firm continues to exist notwithstanding the departure of an attorney and clients may choose to continue representation by that firm.

## **DISCLAIMER**

The directions and forms provided herein are designed to merely serve as suggestions/recommendations for the effective closure of an existing law practice and to assist those tasked with such responsibility to ensure a smooth transaction and protect one's clients' interests. Any material presented herein does not establish, report or create the standard of care for attorneys and is not a complete analysis of the topic. All sample forms must be viewed simply as such and all those relying upon the same must realize that all attorneys' practices are unique and that the attached forms will require editing to conform to the practice which you are closing. Neither the Kentucky Bar Association nor any preparers of the attached packet/forms assume any responsibility and/or liability in connection with the utilization of the direction/guidance and/or forms provided herewith.

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**KENTUCKY BAR ASSOCIATION  
RULES OF THE SUPREME COURT OF KENTUCKY  
PRACTICE OF LAW**

**KENTUCKY BAR ASSOCIATION  
RULES OF THE SUPREME COURT OF KENTUCKY  
PRACTICE OF LAW**

**SCR 3.395 Appointment of special commissioner to protect clients' interests**

(1) When it comes to the attention of the Director that: (a) an attorney has been temporarily suspended pursuant to SCR 3.165 and has failed to notify his/her clients of the suspension as required by Court order; or (b) an attorney has been suspended or disbarred pursuant to SCR 3.370 and has failed to notify his/her clients of his/her suspension or disbarment pursuant to SCR 3.390; or (c) an attorney has resigned pursuant to SCR 3.480 and has failed to notify his/her clients of his/her resignation as required by Court order; or (d) an attorney dies; or (e) an attorney has been declared incompetent; or (f) an attorney abandons his/her law practice or his/her whereabouts are unknown, and no law partner, personal representative of the deceased attorney's estate, or other responsible person capable of conducting the attorney's business affairs is known to exist, the Director may petition the Court, and the Court for good cause may order the Chief Circuit Judge of the Judicial Circuit for the attorney's last known address to order the appointment of 1 or more members of the Association to serve as Special Commissioners of the Court.

The Director shall give notice to the attorney by mailing a copy of the petition to the attorney's last known address, except where the attorney is deceased. If the attorney is deceased, the notice shall be sent to the attorney's personal representative, if known. Within 20 days after the date on which the Director files the petition with the Court, the attorney may file a response to the petition with the Court. The Clerk of the Court shall mail a copy of the Court's order ruling on the petition to the attorney's last known address, to the Director and to the Chief Circuit Judge.

(2) A Special Commissioner appointed under this rule may be authorized by the Court to take possession of the files and records of an attorney described in subsection (1) above, to make an inventory of the files, to give notice to the attorney's clients of the unavailability or inability of the attorney to continue to represent the clients, to deliver to the clients all papers and other property to which the clients are entitled, to take any other action which the clients are entitled and to take any other action which the Court deems necessary to protect the interests of the clients.

(3) The Special Commissioner shall not disclose any information contained in any files which are the subject of an inventory without the consent of the client to whom such files relate, except as reasonably necessary to carry out the orders of the Court.

(4) The Special Commissioner shall file a written report within 6 months, with the Court containing a summary and explanation of the actions taken by the Special Commissioner to fulfill the duties assigned to the Special Commissioner by the Court. This time frame may be extended for good

cause shown. The Special Commissioner shall mail a copy of the report to the Director and to the attorney's last known address.

(5) If the Special Commissioner takes possession of files of an attorney and the Special Commissioner is unable after a diligent effort to deliver the files to the clients or to new attorneys representing the clients, the Special Commissioner may request the Court to enter an order providing for the storage and safekeeping or destruction, as appropriate, of such files.

(6) The Special Commissioner shall be entitled to reasonable compensation with the amount to be determined by the Court and to also be reimbursed for necessary expenses actually incurred. In order to receive such compensation or reimbursement of expenses, the Special Commissioner shall file with the Court a motion containing an itemized list of the time spent on the case, the work performed, and receipts for the expenses incurred. The Special Commissioner's compensation and expenses which are approved by the Court shall be paid by the Association, but any amounts disbursed by the Association to the Special Commissioner shall be assessed as costs against the attorney pursuant to SCR 3.450 if the appointment of the Special Commissioner arose out of, (a) disciplinary proceeding, resignation or an abandonment of the practice or, (b) if the appointment arose out of a mental illness or disease and a guardian has been appointed for the attorney, the cost shall be presented to the attorney's guardian or, (c) if the appointment arose from the death of the attorney, from the estate of the decedent by presenting the fiduciary of the estate the costs and, when possible, to file a proof of claim with the appropriate district court clerk.

HISTORY: Amended by Order 2015-20, eff. 1-1-16, prior amendment(s) eff. 10-1-98 (Order 98-1); adopted by Order 84-2, eff. 7-1-84

## DEFINITIONS

Throughout the forms and documents provided by the Kentucky Bar Association, and contained within the Supreme Court Rules specific words are used repeatedly, which warrant definition or explanation. Contained below is a list of terms and their ordinary meaning.

**AFFECTED ATTORNEY** – This is the attorney who for whatever reason, whether that be death, disbarment, suspension, impairment, or retirement, will no longer be engaged in the practice of law, and whose practice, clients, and possibly former clients will be affected. This attorney is sometimes referred to as the planning attorney, impacted attorney or disabled attorney.

**ASSISTING ATTORNEY** – This is the attorney, licensed in the Commonwealth of Kentucky, who has consented to assist in the closing of the law practice of the affected attorney, whether that consent be by oral or written agreement, or by appointment of the Court of competent jurisdiction, generally the Circuit Court of the county where the affected attorney’s principal office is/was located. The duties and responsibilities of the assisting attorney will vary on a case by case basis, depending on the agreement or appointment, and may include but are not necessarily limited to court appearances on behalf of the affected attorney, notifying clients and former clients of the affected attorney of the closing of the affected attorney’s law practice, distribution and/or storage of the affected attorney’s files, collecting accounts belonging to the affected attorney and distribution of funds remaining in the affected attorney’s trust account. When the assisting attorney has been appointed by the Court to assist in the closing of the affected attorney’s law practice, he/she is referred to as a “special commissioner.”

**SPECIAL COMMISSIONER** – This is the attorney, licensed in the Commonwealth of Kentucky, who has been appointed pursuant to SCR 3.395, by a Court of competent jurisdiction, generally the Circuit Court of the county where the affected attorney’s principal office is/was located to assist in closing out the law practice of the affected attorney. The duties and responsibilities of the Special Commissioner are determined by Order of the Court, and will vary on a case by case basis, depending on the agreement or appointment, and may include but are not necessarily limited to court appearances on behalf of the affected attorney, notifying clients and former clients of the affected attorney of the closing of the affected attorney’s law practice, distribution and/or storage of the affected attorney’s files, collecting accounts belonging to the affected attorney and distribution of funds remaining in the affected attorney’s trust account. Once appointed by the Court, the Special Commissioner may also be referred to as an “assisting attorney.”

**SUBSECTION 1:**  
**PREPLANNING: PLANNING ATTORNEY (AFFECTED ATTORNEY)**  
**FORMS AND CHECKLISTS**

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

1. Download from the Kentucky Bar Association website ([www.kybar.org](http://www.kybar.org)) copies of forms, letters and checklists that will assist you with planning to protect your clients’ interests in the event of death, disability, impairment or incapacity.
2. Use fee agreements that state you have arranged for an Assisting Attorney to close your practice in the event of death, disability, impairment, or incapacity.
3. Have a thorough and up-to-date office procedure manual that includes information on:
  - a. How to check for a conflict of interest;
  - b. How to use the calendaring system;
  - c. How to generate a list of active client files, including client names, addresses, and phone numbers;
  - d. Where client ledgers are kept;
  - e. How the open/active files are organized;
  - f. How the closed files are organized and assigned numbers;
  - g. Where the closed files are kept and how to access them;
  - h. The office policy on keeping original client documents;
  - i. Where original client documents are kept;
  - j. Where the safe deposit box is located and how to access it;
  - k. The bank name, address, account signers, and account numbers for all law office bank accounts;
  - l. The location of all law office bank accounts records (trust and general);
  - m. Where to find, or who knows about, the computer passwords;
  - n. How to access your voicemail (or answering machine) and the access code numbers; and
  - o. Where the post office or other mail service box is located and how to access it.
4. Make sure all your file deadlines (including follow-up deadlines) are calendared.
5. Document your files.
6. Keep your time and billing records up-to-date.
7. Avoid keeping original client documents, such as wills and other estate planning documents.
8. Have a written agreement with an attorney who will close your practice (the “Assisting Attorney”) that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict-of-interest issues.

9. Add your Assisting Attorney's contact information to your KBA Member Profile by logging in to the KBA website and editing your bio.
10. If your written agreement authorizes the Assisting Attorney to sign general account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In some instances, you and the Assisting Attorney will have to sign bank forms authorizing the Assisting Attorney to have access to your general account.
11. If your written agreement provides for an Authorized Signer for your trust account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In most instances, you and the Authorized Signer will have to sign bank forms providing for access to your trust account. Choose your Authorized Signer wisely; he or she will have access to your clients' funds.
12. Familiarize you Assisting Attorney with your office systems and keep him or her apprised of office changes.
13. Introduce your Assisting Attorney and/or Authorized Signer to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney and/or Authorized Signer if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Assisting Attorney and/or Authorized Signer knows whom to contact (the landlord, for example) to gain access to your office.
14. Inform your spouse or closest living relative and the personal representative of your estate of existence of this agreement and how to contact the Assisting Attorney and/or Authorized Signer.
15. Renew your written agreement with your Assisting Attorney and/or Authorized Signer annually.
16. Review your fee agreement each year to make sure that the name of your Assisting Attorney is current.
17. Fill out the Law office List of Contacts and insure your Assisting Attorney has a copy.

## **AGREEMENT TO CLOSE LAW PRACTICE**

Between: \_\_\_\_\_, hereinafter referred to as “Planning Attorney,”

And: \_\_\_\_\_, hereinafter referred to as “Assisting Attorney.”

### **1. Purpose.**

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

### **2. Parties.**

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

### **3. Establishing Death, Disability, Impairment or Incapacity.**

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

### **4. Consent to Close Practice.**

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

limited to, checking accounts, savings accounts, and trust accounts. Planning Attorney's consent includes but is not limited to:

- Entering Planning Attorney's office and using the Planning Attorney's equipment and supplies as needed to close Planning attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property comprising Planning Attorney's law office, including client files and records;
- Examining files and records of Planning Attorney's law practice and obtaining information as to any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients, that planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the clients;
- Filing notices, motions, and pleadings on behalf of clients where the clients' interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected, and informing them that Planning Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing Planning Attorney's clients with a final accounting and statement for services rendered by Assisting Attorney, return of client funds, collection of fees on Planning Attorney's behalf or on behalf of Planning Attorney's estates, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney's law practice or any of its assets to find a buyer for the practice;
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice;
- Employ professionals and incur debt as needed; and
- Planning Attorney's bank or financial institution may rely on the authorizations in the agreement unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

## **5. Payment for Services.**

Planning Attorney agrees to pay Assisting Attorney a reasonable sum for services rendered by Assisting Attorney while closing the law practice of Planning Attorney. Assisting attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney agrees to provide the services specified herein as an independent contractor.

## **6. Preserving Attorney-Client Privilege.**

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

## **7. Assisting Attorney is Attorney for Planning Attorney** (delete one of the following paragraphs as appropriate).

Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the Kentucky Rules of Professional Responsibility.

OR

Assisting Attorney is Not Attorney for Planning Attorney.

## **8. Providing Legal Services.**

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

## **9. Informing Kentucky Bar Association.**

Assisting Attorney agrees to inform the Kentucky Bar Association where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA's online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).

## **10. Contacting Lawyer's Malpractice Insurance Company (or other Carrier).**

Planning Attorney authorizes Assisting Attorney to contact Lawyer's Malpractice Insurance Company or other professional liability insurance carrier concerning any legal malpractice claims or potential claims.

## **11. Providing Clients with Accounting.**

Assisting Attorney agrees to provide Planning Attorney's former clients with a final accounting and statement for legal services of Planning Attorney based on the Planning Attorney's records.

Assisting Attorney agrees to return client funds to Planning Attorney's former clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

## **12. Indemnification.**

Planning Attorney agrees to indemnify Assisting Attorney against any claims, loss, or damages arising out of any act or omissions by Assisting Attorney under this agreement, provided the actions or omissions of Assisting Attorney were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Assisting Attorney was assisting Planning Attorney with the closure of Planning Attorney's office. This indemnification agreement does not extend to any acts, errors or omissions of Assisting Attorney while rendering or failing to render professional services in Assisting Attorney's capacity as attorney for the former clients of Planning Attorney. Assisting Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

## **13. Option to Purchase Practice.**

Assisting Attorney shall have the first option to purchase the practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the Kentucky Rules of Professional Responsibility and other applicable law.

## **14. Arranging to Sell Practice.**

If Assisting attorney opts not to purchase Planning Attorney's practice, Assisting Attorney will make all reasonable efforts to sell Planning attorney's practice and will pay Planning Attorney or Planning Attorney's estate all monies received.

## **15. Fee Disputes to be Arbitrated.**

Planning Attorney and Assisting Attorney agree that all fee disputes between them will be decided by the Kentucky Bar Association Fee Arbitration Program.

## **16. Termination.**

This Agreement shall terminate upon: (1) delivery of written notice of termination by planning Attorney to Assisting Attorney during any time that Planning Attorney is not under disability, impairment, or incapacity as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Planning Attorney's legal representative upon a showing of good cause; or 3) delivery of a written notice of termination given by Assisting Attorney to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting

Attorney pursuant to this Agreement. If Assisting attorney or Assisting Attorney's Alternate for any reason terminates this agreement or is terminated, Assisting Attorney or Assisting Attorney's Alternate acting on his or her behalf shall (1) provide a full and accurate account of financial activities undertaken on Planning Attorney's behalf within 30 days of termination or resignation and (2) provide Planning Attorney or Planning Attorney's legal representatives with Planning Attorney's files, records and funds.

\_\_\_\_\_  
Planning Attorney/Date

\_\_\_\_\_  
Assisting Attorney/Date

COMMONWEALTH OF KENTUCKY  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid mentioned, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC/STATE AT LARGE

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

**LIMITED POWER OF ATTORNEY TO MANAGE AND/OR CLOSE LAW PRACTICE  
AT A FUTURE DATE**

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

- (i) a physician duly licensed to practice medicine who has treated me within one year preceding the date of such certification; OR
- (ii) my Agent, who shall base his/her findings on reliable sources, including one or more members of my immediate family, a written opinion of one or more licensed physicians who diagnosed or treated me within one year preceding the date of my incapacity, my law firm colleagues and/or my office staff with whom I maintained a close and continuous relationship during the period immediately preceding my incapacity

As part of the process of determining whether I lack decision-making capacity, all individually identifiable health information and medical records may be released to my Agent even though such representative’s appointment has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. Section 1320d and 45 C.F.R. Section 160-164.

I hereby appoint my Agent, for the sole and limited purpose and in my name and stead, of conducting all matters and managing all property, whether real or personal, that are related to or associated with my law practice in any way wherein I myself might act if I personally were present and to the extent that I am permitted by law to act through such an agent. These powers shall include and shall be limited to the following:

- a. Entering my office and using my office equipment and supplies as needed to manage or close my practice;
- b. Opening my mail and processing it;
- c. Taking possession and control of all property comprising my law office, including client files and records;
- d. Examining files and records of my law practice and obtaining information as to any pending matters that may require attention;

- e. Notifying clients, potential clients, and other who appear to be clients, that my Agent has been given this authorization and that it is in their best interest to obtain other legal counsel (AND that my Agent may provide legal services to my former clients providing there is no conflict of interest and my Agent obtains my former client's consent to do so.);
- f. Copying my office files;
- g. Obtaining client consent to transfer files and client property to new attorneys;
- h. Transferring client files and property to clients or their new attorneys;
- i. Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/ administrative agencies to obtain extension of time;
- j. Applying for extensions of time pending employment of other counsel by the clients;
- k. Filing notices, motions, and pleadings on behalf of clients where the clients' interests must be immediately protected and other legal counsel has not yet been retained;
- l. Contacting all appropriate persons and entities who may be affected, and informing them of my authorization of Agent;
- m. Arranging for transfer and storage of closed files;
- n. Winding down the financial affairs of my practice, including providing my clients with a final accounting and statement for services rendered by myself, return of client funds, collection of fees on my behalf or on behalf of my estates, payment of business expenses and closure of business accounts where appropriate;
- o. Advertising my law practice or any of its assets to find a buyer for the practice;
- p. Arranging for an appraisal of my practice for the purpose of selling my practice;
- q. Paying Agent a reasonable sum for services rendered with Agent to keep accurate time records for the purpose of determining amounts due for services rendered, which shall be provided by Agent as an independent contractor;
- r. Employ professionals and incur debt as needed; AND
- s. Managing accounts maintained at my bank or financial institution for my practice, including my operating, IOLTA and business savings account, without any further authorizations being necessary unless such bank or financial institution has actual knowledge that this authorization has been terminated or is no longer in effect.

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

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



**WILL PROVISIONS TO BE INCLUDED IN PLANNING ATTORNEY'S  
LAST WILL AND TESTAMENT**

With respect to my law practice, namely the law office of \_\_\_\_\_, my personal representative is expressly authorized and directed to carry out the terms of the Contract with Assisting Attorney, (hereinafter the "Agreement"), between myself and Attorney, \_\_\_\_\_, also identified as "Assisting Attorney," dated \_\_\_\_\_. If that Agreement is not in effect, or if Assisting Attorney is unwilling or unable to perform under the terms of that Agreement, my personal representative is authorized and directed to enter into a similar agreement with another attorney that my personal representative, in his or her sole discretion, may determine to be necessary or desirable to protect the interests of my clients and wind down or dispose of that practice. If a Special Commissioner has been appointed by the appropriate Court of jurisdiction for that purpose either prior to or after my death, my personal representative is authorized and directed to cooperate fully consistent with the orders of appointment. I have provided for the payment of the costs reasonably associated with the process of winding down or disposing of my law practice that would not be covered by existing funds in my operating/business account by designating my estate as the beneficiary of term insurance policy # \_\_\_\_\_, in the amount of \$ \_\_\_\_\_ through \_\_\_\_\_ Insurance Company, the location of which is known to \_\_\_\_\_, and direct my personal representative to pay the Assisting Attorney as invoiced per the terms of the Agreement or any Special Commissioner consistent with orders of appointment.

**OR**

So long as he or she is an attorney duly licensed and in good standing in the Commonwealth of Kentucky, my personal representative is expressly authorized and directed to take such steps as he or she deems necessary or desirable, in my personal representative's sole discretion, to protect the interests of the clients of my law practice, \_\_\_\_\_, and to wind down or dispose of that practice, including but not limited to, selling that practice, collecting accounts receivable, paying expenses related to the practice, employing an attorney or attorneys to provide trust accounting and to issue unused trust balances owing to my clients, to review my files, complete unfinished work, notify my clients of my death and assist my clients in finding other attorneys, and returning files to my clients and/or providing access to my files. I have provided for the payment of the costs reasonably associated with the process of winding down or disposing of my law practice that would not be covered by existing funds in my operating/business account by designating my estate as the beneficiary of term insurance policy # \_\_\_\_\_, in the amount of \$ \_\_\_\_\_ through \_\_\_\_\_ Insurance Company, the location of which is known to \_\_\_\_\_, and direct my personal representative to pay these costs in his/her sole discretion.

**KENTUCKY LAW OFFICE LIST OF CONTACTS**

**DATE COMPLETED:** \_\_\_\_\_

**ATTORNEY:** \_\_\_\_\_ **SSN:** \_\_\_\_\_

**KBA Bar #** \_\_\_\_\_ **FEIN** \_\_\_\_\_ **State Tax ID#** \_\_\_\_\_

**Date of Birth** \_\_\_\_\_

**Office Address** \_\_\_\_\_

**Office Phone** \_\_\_\_\_

**Home Address** \_\_\_\_\_

**Home Phone** \_\_\_\_\_

**Cell Phone** \_\_\_\_\_

**Fax** \_\_\_\_\_ **Email Address** \_\_\_\_\_

**SPOUSE** \_\_\_\_\_

**Work Phone** \_\_\_\_\_

**Cell Phone** \_\_\_\_\_

**Fax** \_\_\_\_\_

**Email Address** \_\_\_\_\_

**Employer** \_\_\_\_\_

**ASSISTING ATTORNEY(S) TO HELP WITH PRACTICE CLOSURE**

**First Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**Work Phone** \_\_\_\_\_

**Cell Phone** \_\_\_\_\_

**Email** \_\_\_\_\_

**Location of Agreement to Close Law Practice** \_\_\_\_\_

**Second Name** \_\_\_\_\_

Address \_\_\_\_\_

Work Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Email \_\_\_\_\_

Location of Agreement to Close Law Practice \_\_\_\_\_

**IDENTITY OF PERSON WITH LOCATION OF WILL AND/OR TRUST**

Name \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**PERSONAL REPRESENTATIVE \_\_\_\_\_**

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**OFFICE MANAGER \_\_\_\_\_**

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**OFFICE-SHARER OR “OF COUNSEL”**

Name \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**IDENTITY OF PERSON WITH COMPUTER AND TELEPHONE PASSWORDS**

Name \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**POSTOFFICE OR OTHER MAIL SERVICE BOX**

Location \_\_\_\_\_

Box Number \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

**SECRETARY** \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**PARALEGAL** \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**BOOKKEEPER/CPA** \_\_\_\_\_

Office Address \_\_\_\_\_

Office Phone \_\_\_\_\_

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

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

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

**LANDLORD** \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

Location of Office Lease \_\_\_\_\_

Lease Expiration Date \_\_\_\_\_

**PROFESSIONAL CORPORATION(S)** \_\_\_\_\_

Date Incorporated \_\_\_\_\_

Location of Corporate Minute Book \_\_\_\_\_

Location of Corporate Stock Certificate \_\_\_\_\_

Location of Corporate Tax Returns \_\_\_\_\_

Fiscal Year-End Date \_\_\_\_\_

Corporate Attorney \_\_\_\_\_

**OFFICE PROPERTY/LIABILITY COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**GENERAL LIABILITY COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**LEGAL MALPRACTICE – PRIMARY COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**LEGAL MALPRACTICE – EXCESS COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**VALUABLE PAPERS COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**OFFICE OVERHEAD COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**HEALTH INSURANCE COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**DISABILITY INSURANCE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**LIFE INSURANCE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**WORKERS' COMPENSATION COVERAGE**

Insurer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Cell Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email Address \_\_\_\_\_

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

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

Location of Policy \_\_\_\_\_

**PROCESS SERVER**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Contact \_\_\_\_\_

Account Number \_\_\_\_\_

**STORAGE LOCKER LOCATION**

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

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Items Stored \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

**FILE STORAGE LOCATION**

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

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Items Stored \_\_\_\_\_

Person With Access \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**SAFE DEPOSIT BOXES**

Institution \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Items Stored \_\_\_\_\_

**LEASES**

Item Leased \_\_\_\_\_

Lessor \_\_\_\_\_

Address \_\_\_\_\_

Location of Lease Agreement \_\_\_\_\_

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

Item Leased \_\_\_\_\_

Lessor \_\_\_\_\_

Address \_\_\_\_\_

Location of Lease Agreement \_\_\_\_\_

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

Item Leased \_\_\_\_\_

Lessor \_\_\_\_\_

Address \_\_\_\_\_

Location of Lease Agreement \_\_\_\_\_

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

**LAWYER TRUST ACCOUNT (IOLTA)**

Institution \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Account Number \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

**INDIVIDUAL TRUST ACCOUNT**

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

Institution \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Account Number \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

**GENERAL OPERATING ACCOUNT(S)**

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 Number \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Institution \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Account Number \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

**MAINTENANCE CONTRACTS**

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

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

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

State \_\_\_\_\_

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

Bar Phone \_\_\_\_\_

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

State \_\_\_\_\_

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

Bar Phone \_\_\_\_\_

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

## **ANSWERS TO FREQUENTLY ASKED QUESTIONS FOR PREPLANNING ATTORNEY**

The following questions and answers are attempted to guide the Planning Attorney and Assisting Attorney in dealing with various issues that could present themselves during the preplanning stage. It does not provide for every situation but simply attempts to cover those most frequently asked questions pertaining to the usual arrangement between the Planning Attorney and the Assisting Attorney.

**1. How can the Planning Attorney make arrangements to give the Assisting Attorney access to all necessary financial accounts?**

If you decide to allow your Assisting Attorney to be an authorized signer, you must decide if you want to give the Assisting Attorney (1) access only during a specific time period, (2) when a specific event occurs; or, (3) access all the time. All steps necessary to effectuate this arrangement should be discussed with the appropriate financial institution where the Planning Attorney's accounts are located. Get written confirmation that the bank will honor your authorizing document no matter the situation. Additionally, it should be clearly delineated in the initial documentation and agreement entered into between the Planning Attorney and the Assisting Attorney.

**2. If the access is going to be contingent, whom should I allow to hold on to the vesting document?**

You may want to have someone (such as your spouse, family member, personal representative, etc.) hold the document until the contingency occurs. This can be documented in the agreement signed between yourself and the Assisting Attorney. When the event occurs, the individual would provide the Assisting Attorney with the power of attorney or vesting document allowing the necessary access. Again, this is largely contingent on the specific terms in your agreement and should be clearly delineated and discussed. Additionally, you should insure that whatever arrangement you make is satisfactory with your individual financial institution.

**3. If the authorization occurs on a contingent basis or a specific time period, how does one determine when this event or period begins?**

This will be largely based on the specific terms and requirements in the agreement between the parties. For example, the agreement may authorize the Assisting Attorney to sign on your accounts only after obtaining a letter from your regular, treating physician that you are disabled or incapacitated. Likewise, it may also specifically authorize access only during a period of your vacation. Any way the parties choose to rectify should be clearly defined in

the agreement, and the terms should be specific to allow the financial institution to make an easy determination whether the terms are met.

**4. If I authorize my Assisting Attorney as a signer on all my financial accounts, is the Assisting Attorney still permitted to be counsel for me?**

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an authorized signer on the Planning Attorney's accounts, the Assisting Attorney would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. To avoid this potential conflict of fiduciary interests, the most conservative approach is to EITHER be an authorized signer OR to represent the Planning Attorney on issues related to the closure of the practice. However, it is possible to do both, but extreme care should be taken by all parties to insure that any and all ethical obligations and rules of professional conduct are followed to limit any possibility of liability as a result.

**5. Once my plan is in place, do I need to inform my current clients and future clients? If so, what and how do I do this?**

Yes, it is crucial that once you have entered into an agreement with an Assisting Attorney, you inform your current clients and future clients of its existence. It is not necessary to inform each of them of the specific terms contained in the agreement just its existence and the identity of the person named as the Assisting Attorney. The easiest way to do this is to include the information in your fee agreements and engagement letters. This provides clients with information about your arrangement.

**6. Do I, the Planning Attorney, have malpractice coverage if and when I am no longer practicing law?**

Most malpractice policies include an automatic short extended reporting period of 60 to 90 days, providing the opportunity to report known or potential malpractice claims when a policy ends and will not be renewed. Additionally, most malpractice policies provide an option to purchase extended reporting period endorsement for longer periods of time. These endorsements do not provide ongoing coverage for new errors, but they will provide the opportunity to lock in coverage under the expiring policy for errors surfacing after the end of the policy, but within the extended reporting endorsement timeframe. This may pose a significant conflict for the Assisting Attorney, unless a provision exists in the agreement between the attorneys that allows the Assisting Attorney to alert former clients in this circumstance because otherwise the former clients will not know of the error within the applicable reporting period and any endorsements covering same. The best protection for the Planning Attorney is to have an agreement with the Assisting Attorney that requires (1) a

specific time period for the purchase of extended coverage after departure including a requirement to verify its existence with the Planning Attorney, and (2) a source of funds available to the Assisting Attorney to adequately pay for the extended coverage after the Planning Attorney's departure.

**7. What other steps should I take other than the execution of an agreement with my Assisting Attorney to insure a smooth closure of my office?**

There are a significant number of steps necessary to effectuate a smooth transition and this information does not claim to list them all. However, some necessary and needed steps include (1) making sure that your office procedures manual explains how to produce a list of client names and addresses for open files, (2) keeping all deadlines and follow-up dates on your calendaring system, (3) thoroughly documenting client files, (4) keeping your time and billing records up-to-date, (5) familiarizing your Assisting Attorney with your office systems, (6) renewing your written agreement with the Assisting Attorney each year, and (7) Adding/verifying your Assisting Attorney's contact information on your KBA Member Profile by logging in to the KBA website and editing/viewing your information.

**SUBSECTION 2:**  
**CLOSING THE LAW OFFICE – PLANNING ATTORNEY (AFFECTED ATTORNEY)**  
**CLOSING HIS/HER OWN OFFICE**  
**FORMS AND CHECKLISTS**

**ACKNOWLEDGEMENT OF RECEIPT OF CLIENT FILE**

**\*\*\* \*\* \***

I, \_\_\_\_\_, hereby acknowledge that I have received all requested materials from my file in the matter of \_\_\_\_\_, from the law office of \_\_\_\_\_. I acknowledge further that the law office of \_\_\_\_\_ has not retained a copy of my file.

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

\_\_\_\_\_  
*Date*

**CLIENT REQUEST/AUTHORIZATION TO TRANSFER CLIENT FILE**

**\*\*\* \*\***

I, \_\_\_\_\_, hereby request and authorize the law office of  
\_\_\_\_\_ to deliver a copy of my file in the matter of  
\_\_\_\_\_ to my new attorney named  
herein below, at the following address:

New Attorney Name:

\_\_\_\_\_

New Attorney Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Client Name*

*Date*

**CLIENT REQUEST FOR FILE**

\*\*\* \*\*

I, \_\_\_\_\_, hereby acknowledge that the law office of \_\_\_\_\_ may not turn my file over to a non-attorney third party. I hereby request that the law office of \_\_\_\_\_ provide me with a copy of my file in the matter of \_\_\_\_\_.

Check One Only:

I will personally pick up my file at the law office of \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_ at approximately \_\_\_\_\_ a.m. /p.m.

OR

Please send my file to my attention at the following address:

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

*Client Name*

*Date*

\*\*\* \*\*

**Note to Client:** Client files will be available for retrieval at the law office of \_\_\_\_\_, located at \_\_\_\_\_ on the following dates/times:

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



**AFFECTED ATTORNEY'S NOTIFICATION TO CLIENT OF  
INTENT TO CLOSE LAW PRACTICE (On Affected Attorney's Own Letterhead)**

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

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

As of \_\_\_\_, I will be closing my law practice and therefore will be unable to continue to represent you.

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs.

It is imperative that when you select your new attorney, that you let me know the name of your attorney, and that you pick up a copy of your file or provide me with a written authorization to send the file to your new attorney. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved.

If you have an upcoming court date or proceeding deadline, the date will be noted on the top of your file. You should review the dates and be sure to inform your new attorney of the same.

I will maintain the closed file for a period of 5 years from the date of this notification. At that time, the file will be destroyed. You are entitled to the materials in the file, except for my work product. If you want the materials in the file, you must notify me in writing within \_\_\_\_ days, keeping in mind any time limitations applicable to your case. If you prefer, you may provide me with a signed authorization to allow your representative to pick up the file on your behalf.

Within the next \_\_\_\_ weeks I will be providing you with a full accounting of your funds in my trust account and fees you currently owe to me (if applicable). You will be able to reach me at the address and phone number listed on this letter until \_\_\_\_\_. After that time, you or your new attorney can obtain a copy of your file from the following:

_____	_____	_____
Name	Address	Phone

I appreciate the opportunity of providing legal services for you. If you have any questions or concerns please feel free to contact me.

Very truly yours,

Attorney's Name

## CHECKLIST FOR PLANNING ATTORNEY CLOSING OWN LAW OFFICE

1. Download from Kentucky Bar Association website copies of all forms, letters and checklists that will assist you in closing out your law practice.
2. Consult Supreme Court Rules, Kentucky Bar Association Ethics Opinions and ABA Opinions.
3. Contact your legal malpractice insurance carrier to notify them of the closure and determine when coverage would end, determine if there is tail coverage in existence or to obtain such coverage.
4. Consider whether or not the practice can be sold as opposed to shut down. (See SCR 3.130-1.17.)
5. Notify your key employees (secretaries, paralegals, others) with institutional or historical knowledge about client, practice or practice systems and instruct them on office closure procedures as appropriate.
6. Identify the numerous locations that files may be kept and gather into one location.
7. Begin file reviews. Generate a list of active client files, including client names, addresses, and phone number.
8. Create an Office Closure file-tracking chart.
9. Create “Notification Letter of Intent To Close Law Practice” to send to clients with instructions on how to request file, how client trust funds will be paid, and how transition will be handled.
10. Change all telephone answering messages.
11. Check the office calendar and tickler system. Determine immediate time deadlines.
12. File Motions to Withdraw.
13. Notify all Judges in the Courts you practice to make the Judges aware of the situation and to cover any cases that may not be discovered in due diligence.
14. For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request extensions, continuances, and resetting of

hearing dates. Send written confirmation of these extensions, continuances, and resets to opposing counsel and to your client.

15. In cases where the client is obtaining a new attorney, be certain that a Notice of Substitution of Attorney is filed.
16. Create an “End of Representation” letter advising that the practice is closing and provide guidance.
17. Create a “Receipt of Original File” form for clients to sign when retrieving their file.
18. Create a “Request for Pick Up or Mailing of File to Client” for clients to sign when requesting their file.
19. Create a “Request/Authorization for Transfer of File to New Attorney” for clients who are retaining a new attorney.
20. Contact state and local bars about practice status, as well as any other state or localized bars.
21. Consider how referrals to other attorneys are to be handled.
22. Finalize any active files that should be closed out.
23. Send out final bills or having staff send our final bills.
24. Avoid keeping original documents of clients, such as Wills and other estate planning documents. If you do have original documents, take steps to return them to clients and if not possible maintain them in a central place, indexed, within the office.
25. Consider issues pertaining to the payment of vendors, utilities, etc. and continuation or termination of any contracts. Who has authority to sign checks or make payments?
26. All clients should be told whether their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients’ permission to destroy the files after approximately 5 years.
27. Plan for the storage of client files not transferred or returned. Notify the Kentucky Bar Association where closed files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA’s online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).

28. Clean all computer and copier hard drives before releasing. Remove all voicemails from the telephone. Release the telephone number upon conclusion of your representation. Also, terminate any leases or continuing contracts for books and services.

**SUBSECTION 3:**  
**CLOSING THE LAW OFFICE – ASSISTING ATTORNEY – WITH PREPLANNING**  
**BY AFFECTED ATTORNEY**  
**FORMS AND CHECKLISTS**

## **CHECKLIST FOR ASSISTING ATTORNEY PLANNING TO CLOSE LAW OFFICE WITH PREPLANNING IN PLACE**

1. Download from the Kentucky Bar Association website ([www.kybar.org](http://www.kybar.org)) copies of forms, letters, court documents and checklists that will assist you in closing the affected attorney's practice.
2. Identify the Client (Estate, P.S.C., Individual, Other) and execute a written engagement letter or fee agreements specifying the scope of work to close the practice.
3. Locate all succession planning documents including Contract with Assisting Attorney, Limited Power of Attorney, Last Will and Testament, other agreements or written directions on how to handle practice in the event of a death or disability.
4. Consult Supreme Court Rules, Kentucky Bar Association Ethics Opinions and ABA Opinions.
5. Contact both the legal malpractice insurance carrier for the attorney's practice you are winding up and your own malpractice carrier to be sure there are not exclusions in your coverage that would affect your representation or winding up the affairs of the practice, such as a missed statute of limitations.
6. Consider whether or not the practice can be sold as opposed to shut down. (See SCR 3.130-1.17.)
7. Identify key employees (secretaries, paralegals, others) with institutional or historical knowledge about client, practice or practice systems.
8. Search for office procedure manual that addresses:
  - a. How to check for a conflict of interest;
  - b. How to use the calendaring system;
  - c. How to generate a list of active client files, including client names, addresses, and phone number;
  - d. Where client ledgers are kept;
  - e. How the open/active files are organized;
  - f. How the closed files are organized and assigned numbers;
  - g. Where the closed files are kept and how to access them;
  - h. What is the office policy on keeping original documents of clients;
  - i. Where original client documents are kept;
  - j. Whether there is or where the safe deposit box is located and how to access it;

- k. What the bank name, address, account signers, and account numbers are for all law office bank accounts;
  - l. Where to locate all law office bank account records (I.O.L.T.A. , trust and general);
  - m. Where to find, or who knows about, the computer passwords;
  - n. How to access E-mail accounts. Once the password(s) have been found, review all recent emails and determine if any need to be retained for future reference.
  - o. How to access voicemail (or answering machine) and the access code number(s).
  - p. Once the access code number(s) has been found, listen to any voicemails and discard any of no significance. Change the incoming message to state whom to call for further information.
  - q. Where the post office or other mail service box is located and how to access it.
9. Assemble or review list of affected attorney's active files/clients in order to perform conflict check.
  10. For those conflicted clients, send clients letter informing them that they will need to pick up their file immediately and retain substitute counsel as you are unable to review the contents of the file for deadlines.
  11. Check the office calendar and tickler system. Determine immediate time deadlines.
  12. File Motions to Withdraw.
  13. For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmation of these extensions, continuances, and resets to opposing counsel and to your client.
  14. Notify all Judges in the Courts where the attorney practiced of their death or abandoned practice and request notice of any hearings or status of cases where problems might arise to make the Judges aware of the situation and to cover any cases that may not be discovered in due diligence.
  15. In cases where the client is obtaining a new attorney, be certain that a Notice of Substitution of Attorney is filed.
  16. Create an Office Closure file tracking chart.
  17. Create an "End of Representation" letter advising that the practice is closing and provide guidance.

18. Create a "Receipt of Original File" form for clients to sign when retrieving their file.
19. Identify the numerous locations that files may be kept and gather into one location. Inquire about old, lost or destroyed files.
20. Begin file reviews.
21. Begin photocopying files to maintain copies that may be needed later.
22. Contact state and local bars about practice status, as well as any other state or localized bars.
23. Identify and safeguard client funds.
24. Decide if Assisting Attorney will take up representation of any clients from closing practice and prepare new engagement agreements.
25. Consider how referrals to other attorneys are to be handled.
26. Keep track of time and billing.
27. Finalize any active files that should be closed out.
28. Consider sending out final bills or having staff send out final bills.
29. Submit invoices for services performed to the personal representative or for payment under the terms of the written Agreement.
30. Avoid keeping original documents of clients, such as Wills and other estate planning documents. If you do have original documents, maintain them in a central place, indexed, within the office.
31. Compose an office budget to determine how staff may be retained to assist, ongoing office expenses may be paid, and consider issues pertaining to the payment of vendors, utilities, etc. Who has authority to sign checks or make payments?
32. All clients should be told whether their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy the files after approximately 5 years.

33. Inform the Kentucky Bar Association where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA's online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).
34. Clean all computer and copier hard drives before releasing. Remove all voicemails from the telephone. Release the telephone number upon conclusion of your representation. Also, terminate any leases or continuing contracts for books and services.
35. Determine what, if any, long term leases, affected attorney has entered into (i.e. vehicle leases, internet, cloud storage, premises, advertising, etc.) and contact the lessor to make arrangements for terminating leases.
36. Where appropriate, make arrangements for disconnection of utilities, internet, telephone, and for surrender of the premises to landlord.



**ASSISTING ATTORNEY'S NOTIFICATION TO CLIENT OF AFFECTED  
ATTORNEY'S INABILITY TO REPRESENT CLIENT**

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

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

\_\_\_\_\_ is no longer able to continue in the practice of law. I will be assisting \_\_\_\_\_, in closing his/her practice. Please know that I do not represent you in your legal matters. I am writing to you strictly for the purpose of notifying you of the closing of \_\_\_\_\_'s legal practice, and to make arrangements for you to retrieve your legal file maintained by \_\_\_\_\_.

You will need to retain the services of another attorney to represent you in your legal matters. We recommend that you retain the services of another attorney immediately so that all of your legal rights can be preserved. In order to complete your legal matter(s), you will need a copy of your legal file for use by you and your new attorney. I am enclosing a written authorization for your file to be released directly to you or to your new attorney. You or your new attorney can forward this authorization to us and we will release the file as instructed. If you prefer, you can come to \_\_\_\_\_ and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Please make arrangements to pick up your file, or have your file transferred to your new attorney by \_\_\_\_\_. It is imperative that you act promptly so that all of your legal rights will be preserved.

Your closed files will be stored in \_\_\_\_\_. If you need a closed file, you can contact me at the following address and phone number until \_\_\_\_\_.

_____	_____	_____
NAME	LOCATION	PHONE

After that time, you can contact \_\_\_\_\_ for your closed files at the following address and phone number.

_____	_____	_____
NAME	LOCATION	PHONE

You will receive a final accounting from \_\_\_\_\_ in a few weeks. This will include any outstanding account balances that you owe to \_\_\_\_\_, and an accounting of any funds remaining your client trust account.

On behalf of \_\_\_\_\_, I would like to thank you for giving him/her the opportunity to provide you with legal services. If you have any additional concerns or questions please feel free to contact me using the information provided herein above.

Very truly yours,

Assisting Attorney's Name

**ASSISTING ATTORNEY'S NOTIFICATION TO CLIENT OF  
AFFECTED ATTORNEY'S DEATH**

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

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

Due to the death of \_\_\_\_\_ his/her law offices are closing. I will be handling the closing of \_\_\_\_\_'s law office.

I am not taking over \_\_\_\_\_'s practice, so you will need to retain the services of another attorney to represent you in your legal matters. I recommend that you retain the services of another attorney to represent you in your legal matters immediately so that all of your legal rights can be preserved. In order to complete your legal matter(s), you will need a copy of your legal file for use by your and your new attorney. I am enclosing a written authorization for your file to be released directly to you or to your new attorney. You or your new attorney can forward this authorization to us and we will release the file as instructed. If you prefer, you can come to \_\_\_\_\_ and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Please make arrangements to pick up your file, or have your file transferred to your new attorney by \_\_\_\_\_. It is imperative that you act promptly so that all of your legal rights will be preserved.

Your closed files will be stored in \_\_\_\_\_. If you need a closed file, you can contact me at the following address and phone number until \_\_\_\_\_.

NAME	LOCATION	PHONE
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After that time, you can contact \_\_\_\_\_ for your closed files at the following address and phone number.

NAME	LOCATION	PHONE
------	----------	-------

You will receive a final accounting from \_\_\_\_\_ in a few weeks. This will include any outstanding account balances that you owe to \_\_\_\_\_, and an accounting of any funds remaining your client trust account.

On behalf of \_\_\_\_\_, I would like to thank you for having given him/her the opportunity to provide you with legal services. If you have any additional concerns or questions please feel free to contact me using the information provided herein above.

Very truly yours,

Assisting Attorney's Name

**ACKNOWLEDGEMENT OF RECEIPT OF CLIENT FILE**

**\*\*\* \*\***

I, \_\_\_\_\_, hereby acknowledge that I have received a copy of my file in the matter of \_\_\_\_\_, from the law office of \_\_\_\_\_ . I acknowledge further that the law office of \_\_\_\_\_ has not retained a copy of my file.

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

\_\_\_\_\_  
*Date*

**CLIENT REQUEST/AUTHORIZATION TO TRANSFER CLIENT FILE**

**\*\*\* \*\***

I, \_\_\_\_\_, hereby request and authorize the law office of  
\_\_\_\_\_ to deliver a copy of my file in the matter of  
\_\_\_\_\_ to my new attorney named  
herein below, at the following address:

New Attorney Name:

\_\_\_\_\_

New Attorney Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Client Name*

*Date*

**CLIENT REQUEST FOR FILE**

\*\*\* \*\*

I, \_\_\_\_\_, hereby acknowledge that the law office of \_\_\_\_\_ may not turn my file over to a non-attorney third party. I hereby request that the law office of \_\_\_\_\_ provide me with a copy of my file in the matter of \_\_\_\_\_.

**Check One Only:**

I will personally pick up my file at the law office of \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_ at approximately \_\_\_\_\_ a.m. /p.m.

OR

Please send my file to my attention at the following address:

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

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

*Client Name* *Date*

\*\*\* \*\*

**Note to Client:** Client files will be available for retrieval at the law office of \_\_\_\_\_, located at \_\_\_\_\_ on the following dates/times:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**EXECUTOR'S MOTION FOR APPOINTMENT OF TRUSTEE TO MANAGE  
CLOSING OF LAW PRACTICE, WHEN ADVANCED PROVISIONS HAVE BEEN  
MADE TO APPOINT TRUSTEE**

THE FOLLOWING MOTION PRESUMES SEPARATE COUNSEL FOR IOLTA/TRUST  
ACCOUNTS

**COMMONWEALTH OF KENTUCKY**  
\_\_\_ **JUDICIAL CIRCUIT**  
\_\_\_ **DISTRICT COURT**  
**PROBATE DIVISION**  
**ACTION NO: \_\_\_\_\_**

**IN RE: THE ESTATE OF \_\_\_\_\_**

---

**MOTION TO APPOINT TRUSTEE/CO-TRUSTEE OF \_\_\_\_\_'S LAW PRACTICE**

---

Comes now \_\_\_\_\_, Executor [*or Administrator*], of the Estate of \_\_\_\_\_, and move the Court for an Order appointing a member or members of the \_\_\_ Kentucky Bar Association to serve as Trustee/Co-Trustee(s) of the law practice of \_\_\_\_\_, namely \_\_\_\_\_ Law Office, due to his/her death. In support of said motion, Executor [*or Administrator*] states as follows:

1. According to the records of the Kentucky Bar Association, decedent, \_\_\_\_\_ was licensed to practice law on \_\_\_\_\_.
2. At the time of his/her death, \_\_\_\_\_ practiced law in \_\_\_ County, Kentucky, and was the owner [*sole and managing member*] of the \_\_\_\_\_ Law Office, with a principal business address of \_\_\_\_\_.
3. On information and belief, at the time of his/her death, the decedent has no law partners or associates capable of winding down his/her law practice and insuring that the interests of his/her clients, and former clients, are protected.
4. On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of the decedent, \_\_\_\_\_, and/or in the name of his/her law office.
5. [*Assisting Attorney1 Name here*], an attorney licensed to practice in the Commonwealth of Kentucky, and a member in good standing of the Kentucky Bar Association, Bar Id.

Number: \_\_\_\_\_, has consented to serve as Trustee/Co-Trustee of the Kentucky law practice of decedent, \_\_\_\_\_, namely the \_\_\_\_\_ Law Office for purposes of protecting the interest of the decedent's clients and former clients and assisting in winding down decedent's law practice, including but not limited to reviewing files, completing unfinished work, notifying clients and former clients of decedent's death, assisting clients in finding other attorneys, providing access to and returning files to clients and former clients. See Sworn Affidavit attached hereto as **EXHIBIT A**.

6. *[Assisting Attorney2 Name here]*, an attorney licensed to practice in the Commonwealth of Kentucky, and a member in good standing of the Kentucky Bar Association, Bar Id. Number: \_\_\_\_\_, has consented to serve as Trustee/Co-Trustee of the Kentucky law practice of decedent, \_\_\_\_\_, namely the \_\_\_\_\_ Law Office for purposes of provide trust accounting and to issuing unused trust balances owing to decedent's clients, as part of winding down decedent's law practice. See Sworn Affidavit attached hereto as **EXHIBIT B**.

**WHEREFORE**, \_\_\_\_\_, Executor *[or Administrator]* prays of this Court entry of an order as follows:

1. Appointing \_\_\_\_\_, to serve as Trustee/Co-Trustee of the law practice of decedent, \_\_\_\_\_, namely \_\_\_\_\_ Law Office, and authorizing Trustee/Co-Trustee to gain possession of decedent's law office files, to secure decedent's law office accounts, with the exclusion of law office IOLTA account, to gain possession of decedent's fiduciary account record, including all bank statements and cancelled checks, all deposit slips, all check stubs and all client ledger accounts and to take such action as are necessary to protect the interests of the clients and/or former clients of decedent, \_\_\_\_\_;
2. Directing and Ordering all accounting and financial institutions holding commercial accounts and accounting records belonging to decedent, \_\_\_\_\_, and/or \_\_\_\_\_ Law Office, to provide Trustee/Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts, with the exclusion of law office IOLTA account, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs;
3. Appointing \_\_\_\_\_, to serve as Trustee/Co-Trustee of the law practice of decedent, \_\_\_\_\_, namely \_\_\_\_\_ Law Office, and authorizing Trustee/Co-Trustee to gain access to decedent's law office accounts and accounting records pertaining to law office IOLTA/TRUST accounts, including all bank statements and cancelled checks, all deposit slips, all check stubs and all client ledger accounts and to take such action as are necessary to protect the interests of the clients and/or former clients of decedent, \_\_\_\_\_ with regard to IOLTA/TRUST accounts;

4. Directing and Ordering all accounting and financial institutions holding commercial IOLTA/TRUST accounts and IOLTA/TRUST accounting records belonging to decedent, \_\_\_\_\_, and/or \_\_\_\_\_ Law Office, to provide Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts pertaining to IOLTA/TRUST accounts, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs;
5. For such other and future relief as Court deems appropriate.

Respectfully Submitted,

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**COMMONWEALTH OF KENTUCKY**  
**\_\_\_ JUDICIAL CIRCUIT**  
**\_\_\_ DISTRICT COURT**  
**PROBATE DIVISION**  
**ACTION NO: \_\_\_\_\_**

**IN RE: THE ESTATE OF \_\_\_\_\_**

---

SWORN AFFIDAVIT OF ATTORNEY

---

Comes now, \_\_\_\_\_, after being duly sworn, and states and avers as follows:

1. My name is \_\_\_\_\_, and I am an attorney licensed to practice in the Commonwealth of Kentucky.
  
2. I am a member of the Kentucky Bar Association, in good standing, with a Bar Identification Number of \_\_\_\_\_.
  
3. My principal office address is \_\_\_\_\_, \_\_\_\_\_ County, Kentucky.
  
4. I consent and agree to serve as Trustee/Co-Trustee for the \_\_\_\_\_ Law Office, belonging to the deceased, \_\_\_\_\_, and to the Estate of \_\_\_\_\_, for the purpose of assisting in winding down decedent's law practice, including but not limited to reviewing files, completing unfinished work, notifying clients and former clients of decedent's death, assisting clients in finding other attorneys, providing access to and returning files to clients and former clients.

Further the Affiant sayeth naught.

\_\_\_\_\_  
Name of Assisting Attorney1

COMMONWEALTH OF KENTUCKY  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires On: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
\_\_\_\_ JUDICIAL CIRCUIT  
\_\_\_\_ DISTRICT COURT  
PROBATE DIVISION  
ACTION NO: \_\_\_\_\_

IN RE: THE ESTATE OF \_\_\_\_\_

SWORN AFFIDAVIT OF ATTORNEY

Comes now, \_\_\_\_\_, after being duly sworn, and state and avers as follows:

1. My name is \_\_\_\_\_, and I am an attorney licensed to practice in the Commonwealth of Kentucky.
2. I am a member of the Kentucky Bar Association, in good standing, with a Bar Identification Number of \_\_\_\_\_.
3. My principal office address is \_\_\_\_\_, \_\_\_\_\_ County, Kentucky.
4. I consent and agree to serve as Trustee/Co-Trustee for the \_\_\_\_\_ Law Office, belonging to the deceased, \_\_\_\_\_, and to the Estate of \_\_\_\_\_, for the purpose of assisting in providing trust accounting and issuing unused trust balances owing to decedent's clients, as part of winding down decedent's law practice.

Further the Affiant sayeth naught.

\_\_\_\_\_  
Name of Assisting Attorney2

COMMONWEALTH OF KENTUCKY  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires On: \_\_\_\_\_

**DISTRICT PROBATE COURT'S ORDER FOR APPOINTMENT OF TRUSTEE**

**COMMONWEALTH OF KENTUCKY**

\_\_\_ **JUDICIAL CIRCUIT**

\_\_\_ **DISTRICT COURT**

**PROBATE DIVISION**

**ACTION NO: \_\_\_\_\_**

**IN RE: THE ESTATE OF \_\_\_\_\_**

---

**ORDER**

---

The matter came before the Court on motion of \_\_\_\_\_, Executor [*or Administrator*] of the Estate of \_\_\_\_\_, for an Order appointing a member or members of the local bar to serve as Trustee/Co-Trustees of the law practice of the decedent, \_\_\_\_\_, namely \_\_\_\_\_ Law Office, owing to his/her death, and based upon the motion before the Court, the undersigned makes the following:

**FINDING OF FACT**

1. According to the records of the Kentucky Bar Association, decedent, \_\_\_\_\_, was licensed to practice law in the Commonwealth of Kentucky and at the time of his/her death, practiced law in \_\_\_\_\_ County, Kentucky from the \_\_\_\_\_ Law Office.
2. According to the records of the Kentucky Bar Association, decedent, \_\_\_\_\_, and \_\_\_\_\_ Law Office had a principal office address of \_\_\_\_\_.
3. At the time of his/her death, \_\_\_\_\_ had no partners or associates capable of winding down his/her law practice and ensuring that the interests of his/her clients and/or former clients are protected.
4. On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of \_\_\_\_\_ and/or \_\_\_\_\_ Law Office. At the time of his/her death, \_\_\_\_\_ had no partners or associates capable of carry out his/her obligations to his/her clients and former clients.

5. \_\_\_\_\_, an attorney licensed to practice in the Commonwealth of Kentucky and a member in good standing of the \_\_\_\_\_ Kentucky Bar Association, has consented and indicated that he/she is willing to serve as Trustee/Co-Trustee of the Kentucky law practice of decedent, \_\_\_\_\_, namely \_\_\_\_\_ Law Office, for purposes of protecting the interests of decedent, \_\_\_\_\_'s clients and former clients and to assist Executor/Administrator in winding down decedent's law practice, including but not limited to reviewing files, completing unfinished work, notifying clients and former clients of decedent's death, assisting clients in finding other attorneys, providing access to and returning files to clients and former clients.
  
6. \_\_\_\_\_, an attorney licensed to practice in the Commonwealth of Kentucky and a member in good standing of the \_\_\_\_\_ Kentucky Bar Association, has consented and indicated that he/she is willing to serve as Trustee-Co-Trustee of the Kentucky law practice of decedent, \_\_\_\_\_, namely \_\_\_\_\_ Law Office, for purposes of protecting the interests of decedent, \_\_\_\_\_'s clients and former clients and to assist Executor/Administrator by provide trust accounting and by issuing to decedent's clients unused trust balances owing to those clients.

#### CONCLUSIONS OF LAW

7. This Court has jurisdiction of this cause, pursuant to KRS \_\_\_\_\_.
  
8. \_\_\_\_\_ has died and has no partners or associates, necessitating the appointment of a member or members of the \_\_\_\_\_ Kentucky Bar Association as Trustees/Co-Trustees of \_\_\_\_\_'s law practice, namely, \_\_\_\_\_ Law Office, to gain possession of \_\_\_\_\_'s client files, to secure \_\_\_\_\_'s trust and/or fiduciary accounts, to gain possession of \_\_\_\_\_'s trust and/or fiduciary accounts, including but not limited to all bank accounts, cancelled checks, deposit slips, check stubs and ledgers, and to take such actions as are necessary to protect the interests of the clients and former clients of decedent, \_\_\_\_\_.

#### JUDGMENT AND ORDER

**THIS COURT THEREFORE ADJUDGES AND ORDERS** as follows:

1. \_\_\_\_\_, an attorney licensed to practice law in the Commonwealth of Kentucky, and a member in good standing of the Kentucky Bar Association, is hereby appointed Trustee/Co-Trustee of the law practice of \_\_\_\_\_, namely the \_\_\_\_\_ Law Office.
  
2. As Trustee/Co-Trustee, \_\_\_\_\_ is authorized to take such actions as are necessary to obtain possession of any known client files of \_\_\_\_\_ and the \_\_\_\_\_ Law Office, and shall notify \_\_\_\_\_'s clients of his/her death

and the need to obtain new counsel. His/her duties as trustee shall include receiving calendar notices and moving for appropriate continuances in the various courts; returning files to \_\_\_\_\_'s clients and former clients, obtaining all records related to \_\_\_\_\_'s fiduciary account(s); supervising the disbursement of funds from any fiduciary accounts, with the exclusion of IOLTA/TRUST account(s) to the appropriate persons; and any other act necessary to wind down \_\_\_\_\_'s practice and protect the interests of \_\_\_\_\_'s clients until all known clients have secured other legal counsel, have chosen to pick up their files and have received all money held in trust for their benefit. As Trustee/Trustee, \_\_\_\_\_ is further authorized to take such actions as are necessary to identify \_\_\_\_\_'s fiduciary accounts, with the exception of IOLTA/TRUST account(s), and to take possession of \_\_\_\_\_'s fiduciary account(s) records, with the exception of IOLTA/TRUST accounting records. As Trustee/Co-Trustee, \_\_\_\_\_ shall take such actions as are necessary to identify the ownership of any funds held in \_\_\_\_\_'s fiduciary account(s), with the exception of IOLTA/TRUST accounts, so that clients/ beneficiaries may be reimbursed, or their funds forwarded as they may direct. As Trustee/Co-Trustee, \_\_\_\_\_ shall maintain adequate accounts of the funds held in \_\_\_\_\_'s fiduciary account(s), with the exception of IOLTA/TRUST account(s) and shall account to the Court for approval annually or at the completion of the disbursement of the funds. He/She shall be discharged as Trustee/Co-Trustee upon the completion of his/her duties, by petitioning the Court for such discharge.

3. As Trustee/Co-Trustee, \_\_\_\_\_ is hereby authorized to take such actions as are necessary to secure \_\_\_\_\_'s fiduciary accounts, excluding IOLTA/TRUST accounts, including but not limited to, executing new directives regarding signatory authority over such accounts. As Trustee/Co-Trustee, \_\_\_\_\_, is also authorized to obtain records relevant to \_\_\_\_\_ fiduciary accounts, with the exception of IOLTA/TRUST accounts, from all financial institutions where accounts in which funds of clients or fiduciary funds have been deposited by or in the name of decedent, \_\_\_\_\_, or the \_\_\_\_\_ Law Office, and to execute authorizations directing such financial institutions to release copies of all relevant records relating to such accounts to representatives of the Kentucky Bar Association.
4. All financial institutions holding deposits and accounts in the name of \_\_\_\_\_, or \_\_\_\_\_ Law Office are directed and ordered to provide Trustee/Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts pertaining to all fiduciary accounts, with the exception of IOLTA/TRUST accounts, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs;

5. All bookkeeping and accounting organizations with custody and/or control over the accounting/bookkeeping records of \_\_\_\_\_, or \_\_\_\_\_ Law Office are directed and ordered to provide Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts pertaining to all fiduciary accounts, with the exception of IOLTA/TRUST accounts, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs;
  
6. \_\_\_\_\_, an attorney licensed to practice law in the Commonwealth of Kentucky, and a member in good standing of the Kentucky Bar Association, is hereby appointed Trustee/Co-Trustee of the law practice of \_\_\_\_\_, namely the \_\_\_\_\_ Law Office.
  
7. As Trustee/Co-Trustee, \_\_\_\_\_ is authorized to take such actions as are necessary to obtain possession of any known client files of \_\_\_\_\_ and the \_\_\_\_\_ Law Office, and shall notify \_\_\_\_\_'s clients of his/her death and the need to obtain new counsel. His/her duties as trustee shall include receiving calendar notices and moving for appropriate continuances in the various courts; returning files to \_\_\_\_\_'s clients and former clients, obtaining all records related to \_\_\_\_\_'s fiduciary accounts(s); supervising the disbursement of funds from any fiduciary accounts, with the exclusion of IOLTA/TRUST account(s) to the appropriate persons; and any other act necessary to wind down \_\_\_\_\_'s practice and protect the interests of \_\_\_\_\_'s clients until all known clients have secured other legal counsel, have chosen to pick up their files and have received all money held in trust for their benefit. As Trustee/Trustee, \_\_\_\_\_ is further authorized to take such actions as are necessary to identify \_\_\_\_\_'s fiduciary accounts, with the exception of IOLTA/TRUST account(s), and to take possession of \_\_\_\_\_'s fiduciary account(s) records, with the exception of IOLTA/TRUST accounting records. As Trustee/Co-Trustee, \_\_\_\_\_ shall take such actions as are necessary to identify the ownership of any funds held in \_\_\_\_\_'s fiduciary account(s), with the exception of IOLTA/TRUST accounts, so that clients/ beneficiaries may be reimbursed, or their funds forwarded as they may direct. As Trustee/Co-Trustee, \_\_\_\_\_ shall maintain adequate accounts of the funds held in \_\_\_\_\_'s fiduciary account(s), with the exception of IOLTA/TRUST account(s) and shall account to the Court for approval annually or at the completion of the disbursement of the funds. He/She shall be discharged as Trustee/Co-Trustee upon the completion of his/her duties, by petitioning the Court for such discharge.
  
8. As Trustee/Co-Trustee, \_\_\_\_\_ is hereby authorized to take such actions as are necessary to secure \_\_\_\_\_'s IOLTA/TRUST accounts, including but not limited to, executing new directives regarding signatory authority over such accounts. As Trustee/Co-Trustee, \_\_\_\_\_, is also authorized to obtain records relevant to

\_\_\_\_\_’s IOLTA/TRUST accounts, from all financial institutions where accounts in which funds of clients or fiduciary funds have been deposited by or in the name of decedent, \_\_\_\_\_, or the \_\_\_\_\_ Law Office, and to execute authorizations directing such financial institutions to release copies of all relevant records relating to such accounts to representatives of the Kentucky Bar Association.

9. All financial institutions holding deposits and accounts in the name of \_\_\_\_\_, or \_\_\_\_\_ Law Office are directed and ordered to provide Trustee/Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts pertaining to all IOLTA/TRUST accounts, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs;
  
10. All bookkeeping and accounting organizations with custody and/or control over the accounting/bookkeeping records of \_\_\_\_\_, or \_\_\_\_\_ Law Office are directed and ordered to provide Co-Trustee, \_\_\_\_\_, with copies of ledgers and accounts pertaining to all IOLTA/TRUST accounts, including but not limited to all bank statements and cancelled checks, all deposit slips and all check stubs. Dated this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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JUDGE \_\_\_\_\_ DISTRICT COURT  
PROBATE DIVISION

**CLERK’S DISTRIBUTION:**

\_\_\_\_\_, Executor

\_\_\_\_\_, Estate Counsel

\_\_\_\_\_, Trustee/Co-Trustee1

\_\_\_\_\_, Trustee/Co-Trustee2

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CLERK’S INITIAL

DATE

## **ANSWERS TO FREQUENTLY ASKED QUESTIONS FOR ASSISTING ATTORNEY WITH PREPLANNING**

The following questions serve as guidance for an Assisting Attorney during the course of closing another attorney's office with preplanning in place.

**1. Must I notify the former clients of the Affected Attorney if I discover a potential malpractice claim against the Affected Attorney?**

This answer is largely determined by the agreement one has with the Affected Attorney and the Affected Attorney's former clients. If there is no attorney-client relationship with the Affected Attorney, and you are the new lawyer for the Affected Attorney's former clients, you must inform your client (Affected Attorney's former client) of the error, and advise accordingly of the ability to submit a claim to the appropriate professional malpractice insurance carrier of the Affected Attorney, unless the scope of your representation of the client excludes actions against the Affected Attorney. If you desire to limit your scope of representation, you must do so in writing and advise your client to get independent legal advice on the issue. In general, it is always best to advise the Affected Attorney's former clients of their right to seek a second opinion.

If you are counsel for the Affected Attorney and not the lawyer for the former clients, you should discuss the error with the Affected Attorney, if possible, and review the obligation to inform the client and malpractice insurance carrier of the error. Given this situation, you would not be obligated to inform the Affected Attorney's client of the error. However, you should be careful to avoid making any misrepresentations to the client. In any event, you should notify the Affected Attorney's malpractice insurance carrier as soon as you become aware of any error or omission that may be a potential malpractice claim to prevent a denial of coverage under the policy due to any "late notice" provision.

If you are counsel for the Affected Attorney, you can make an arrangement to inform any former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Affected Attorney. It would simply be authorization to inform the former clients that a potential error exists and each individual should seek independent counsel.

Please also see SCR 3.130-8.3 and SCR 3.130-1.6.

**2. If the Affected Attorney's clients ask questions about the nature of the attorney's death/disability or abandonment, how much am I at liberty to disclose?**

This answer also depends on the relationship you have with the Affected Attorney and

the clients. If you are counsel for the Affected Attorney, you would be limited to disclosure of any information that the Affected Attorney authorized you to disclose. You would certainly want to make clear to the Affected Attorney's former clients that you do not represent them and they should seek independent counsel. You are not at liberty to disclose any information to the attorney's former client regarding circumstances of the attorney's absence from the practice of law beyond that information which is "public record." This may include the information that has been published in the local newspaper, i.e., automobile accidents, funeral arrangements and obituary. For disabled or injured attorneys, you may not disclose the facility where the disabled attorney is receiving medical treatment, unless the disabled attorney's next of kin/family consents. You may want to inquire of the family where cards, letters flowers and condolences and get well wishes should be sent. For the abandoning or suspended attorney, you may not disclose the reason for the attorney's unavailability beyond that which is public record, or public reprimand. To do otherwise, could expose you to potential defamation charges or litigation for violating HIPAA or otherwise protected information. In addition, you risk coming across as "gossiping" about your colleague, which will place you in a bad light, and subject you to risk of potential litigation. Be careful not to "hint" at the nature of the disability, as this is dangerous in itself when dealing with the client with a "vivid imagination."

**3. What protection do I have under the Affected Attorney's malpractice insurance coverage if I assist in the closing of the practice or sale of any of the assets belonging to the Affected Attorney's office?**

A thorough review of the malpractice policy must be undertaken to check the definition of "Insured." Most policies define "Insured" as both the firm and the individual lawyers employed by or affiliated with the firm. It typically is broadened to include past employees and "of counsel" attorneys. Additionally, most professional liability policies specifically provide coverage for the "estate, heirs, executors, trustees in bankruptcy and legal representatives" of the Insured as additional parties covered under the policy. However, the best insurance is the Assisting Attorney's own malpractice policy covering such a situation.

**4. What exposure do I have as an Assisting Attorney under my own malpractice coverage? What steps should I take if I undertake the role to assist in the closure of an office by death, abandonment or otherwise?**

An Assisting Attorney should immediately review his/her own policy and contact his/her carrier to establish the parameters of any exposure from the role as Assisting Attorney. Likewise, the Assisting Attorney should insure there is no exclusion under the individual policy or additional requirements necessary to invoke coverage under the

policy.

**5. If asked by the Affected Attorney's former clients while transferring their individual file, may I represent them in their individual cases?**

This is largely dependent on: (1) whether the former clients want you to represent them; and, (2) whom else you represent. If you are representing the Affected Attorney, you cannot represent the former clients on any matter against the Affected Attorney. This includes a malpractice claim, ethics complaint, or fee claim against the Affected Attorney. If you do not represent the Affected Attorney, you are simply limited by the conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undergoing representation or a review of confidential information of an Affected Attorney's former client. However, even if a conflict check reveals you are permitted to represent the client, you still might be wise to refer the case. This is advisable if the matter is outside of your area of expertise, you do not have adequate time to handle the case, or you do not have adequate staff or financial resources to handle the case. Additionally, if the Affected Attorney is a friend, not bringing a legal malpractice claim or fee claim against the Affected Attorney could make you vulnerable to an allegation that you did not zealously advocate for your new client. In an attempt to avoid this potential exposure, it might be wise to provide the former client with names of other attorneys or refer the client to the appropriate lawyer referral service.

**6. What must I do during the process of reviewing the deceased/disabled/abandoning attorney's files when I discover there is a conflict between myself or my firm and the deceased/disabled/abandoning attorney's client?**

One of the first steps you should take upon accepting the appointment as Assisting Attorney is to create a client list of the Affected Attorney's clients and perform an initial conflicts check before delving in to the substance of the client's file. Do this in much the same manner that you would perform such a conflicts check in your own firm. (Please also see SCR 3.130-1.7.) Make a list of those files where a conflict or potential conflict exists, do not review those files for content, and do not review billing to the client. For those clients, you may still contact the clients to inform of the death/disability or absence from the practice of law of their attorney, and offer to arrange for those clients to retrieve their file. When you are able to reach the clients and they want to retrieve their file, it may be prudent to have a staff member, or someone other than yourself meet the client for the purpose of delivering the client's file to the client. In this way, there can be no question as to whether you have looked at their case file. You will want to inform those conflicted clients that you were unable to review their files for pending

or missed deadlines and for unused fees or billing account balances.

**7. What should I do with the files that I have not been able to return to clients? Am I required to preserve or store them for a specified period of time?**

You are responsible for preserving those files for a period of time. Make a list of those you are unable to return to the client/former client. If you have space at your own storage facility, store the files there. Otherwise, rent storage space in which to store those files, even if you have to do so at your own expense. A good rule of thumb is to plan on retaining the files for at least 5 years. (Please also see Ethics Opinion KBA E-436.) There is one line of thought that delineates the length of time in which you are required to retain a file, depending on the kind of action or nature of the case. Since complex actions involve more than one cause action or could be classified from a number of perspectives, and because it is more difficult to manage preservation of files if you have a different rule for files of different types, determine the longest period of time you would be required to protect and preserve a file and then keep all files for that period of time. Inform the Kentucky Bar Association where the files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA's online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).

For your own protection, prior to disposing of any files, seek guidance and assistance from the Office of Bar Counsel and/or the Affected Attorney's malpractice carrier. Once you do, you must destroy each file in a responsible manner. Do not simply place the files in the trash or on the curb on trash day. Make arrangements to have the files burned or shredded by a responsible party.

**8. What procedures should I follow for distributing the funds that remain in the trust account of the Affected Attorney?**

If your review or an authorized signer's review of the Affected Attorney's trust account indicates there may be conflicting claims to funds in the account, you should initiate a procedure for distributing the existing funds, such as an interpleader action in the appropriate venue. If there is a clear shortfall in the available funds, it may be wise to contact the Kentucky Bar Association and instill their services.

**9. During the process of auditing the trust account and comparing it with the amount that should be in the clients' fee accounts, I have discovered the Affected Attorney potentially stole or misappropriated the client's unused fees. Am I obligated to inform either the client/former client, the Court, or the Kentucky Bar Association?**

If you are also responsible for reviewing the Affected Attorney's client files, do that first, before determining whether or not there are funds missing. It could be work was performed by the attorney for which time tickets still need to be posted to the client's billing account. Conversely, the complete file review should also disclose whether the Affected Attorney had received a settlement or judgment that should have been deposited in the trust/escrow account and distributed to the client, but for whatever reason it was not. Once you have completely reviewed the trust/escrow account, client billing accounts and client files, you should make a complete accounting of the trust/escrow account(s) identifying discrepancies in client fee accounts on a client-by-client basis. Once completed and discrepancies exist, you should contact the Office of Bar Counsel with the Kentucky Bar Association for guidance on this issue. It may also be prudent to contact the Affected Attorney's malpractice carrier to put it on notice of the potential issue.

**10. During the process of conducting an initial file review, I discover that a deadline is about to run. Am I required to take action to file the pleading on behalf of the client before the deadline runs?**

To the extent of filing a substantive pleading on the merits of the case, the answer is "no," unless the Affected Attorney's former client has retained you and your firm for representation in the matter. To do so otherwise would be tantamount to attempting to practice each of the Affected Attorney's cases as if you were attorney of record, and could expose you to liability for which you may not otherwise be exposed. You should make every attempt to return the client's file before the deadline runs and impress upon the client the deadline and significance of missing the deadline, encouraging the client to immediately retain counsel before the deadline has run. If there is insufficient time to return the file to the client before the expiration of a pending deadline, while you are not under an obligation to file substantive pleadings on behalf of the Affected Attorney's client, you should enter your limited appearance as trustee for the Affected Attorney's law practice for the purpose of seeking enlargement of time on behalf of the client if their deadline has not run, or in the alternative if the deadline has already run, leave of the Court to permit the client to file a belated pleading, once substitute counsel is retained. Further, you may want to contact the opposing party or their counsel and request a tolling agreement.

**11. If I become aware of an ethical violation must I inform the Affected Attorney's clients or other entities? Again, this depends largely on the relationships established between all parties.**

The answer is (1) no, if you are the Affected Attorney's lawyer, (2) maybe, if you are not

representing the Affected Attorney or the former clients, and, (3) maybe, if you are the attorney for the Affected Attorney's former clients.

- (1) If you are the Affected Attorney's lawyer, you are not obligated to inform the former clients of any conduct violations or report any ethical violations to the disciplinary committee if your knowledge of the misconduct is a confidence or secret of your client, the Affected Attorney. Although you have no duty to report, there may be other responsibilities. If you discover that some of the client funds are not in the Affected Attorney's escrow account as they should be, you should discuss this matter with the Affected Attorney, if available, and encourage the correction of this shortfall. If the Affected Attorney is available and does not correct the shortfall, and you believe this conduct violates the disciplinary rules, you should take the necessary steps to resign. If you are the Affected Attorney's lawyer, and the Affected Attorney is deceased, you should contact the personal representative of the estate. If the Affected Attorney is alive but otherwise unavailable, you (or the authorized signer) may have to disburse the amounts available and inform the former clients that they have the right to seek independent legal advice. If you are the Affected Attorney's lawyer, you should make certain the former clients do not perceive you as their attorney. This should include a written letter signed by you informing them of this fact.
- (2) If you are not the Affected Attorney's lawyer, and you are not representing any of the former clients, you may still have a fiduciary obligation to notify the former clients of a shortfall in the escrow account. Additionally, you may have an obligation to report the Affected Attorney to the appropriate disciplinary arm of the Kentucky Bar Association. Likewise, you should report any notice of a potential claim to the Affected Attorney's malpractice insurance carrier to preserve coverage under the malpractice insurance policy.
- (3) If you are the attorney for a former client of the Affected Attorney, you have an obligation to inform the client about the ethical violations that are relevant to the client's interests. You also should inform the client of all necessary and available remedies including but not limited to the filing of a claim with the Kentucky Bar Association and the appropriate malpractice insurance carrier. You should determine ahead of time whether you are prepared to assume the obligation to inform former clients of the Affected Attorney's ethical errors, especially if you are a friend of the Affected Attorney.

You may wish to limit in advance the scope of your representation by informing the former clients that you do not intend to provide them with advice on ethics violation of the Affected Attorney. You should advise the former clients in writing to seek

independent representation on these issues. Any limitation of your representation should be reasonable under the circumstances, and the former clients must give informed consent. Nevertheless, there will be situations in which such a limitation will not be reasonable, and you will be obligated ethically and legally to inform the former clients of an Affected Attorney's ethical violation.

As a general rule, whether you have an obligation to disclose a mistake to a former client will depend on the nature of the Affected Attorney's possible error or omission, whether it is possible to correct it in the pending proceeding, the extent of the harm from the possible error or omission, and the likelihood that the Affected Attorney's conduct would be deemed unreasonable and give rise to a malpractice claim as a result. Ordinarily, lawyers are charged with an obligation to keep their clients informed and provide all information necessary to make decisions relating to the representation.

**12. Do I have authority to access/distribute/refund funds from the Affected Attorney's trust/escrow account(s)?**

Assuming the agreement you have with the Affected Attorney gives you that authority, then yes, but only after a complete accounting has been performed, and all discrepancies and deficiencies rectified accordingly. It is not for you to reimburse the Affected Attorney's clients upon demand by the client, or in a first-come/first-serve basis. You should perform a complete audit of the account, taking into consideration settlements and judgments, as well as work which had been performed by the Affected Attorney but which had not been posted against the client's fee account. Only after obtaining a detailed accounting, on a client-by-client basis, and rectifying discrepancies should you make any disbursements from the client's trust/escrow account. Further, when there are insufficient funds available, you should seek guidance from the Office of Bar Counsel.

**13. If I become aware that the Affected Attorney stole client funds, do I have exposure to professional discipline against me?**

You will not be disciplined for stealing any client funds, unless: (1) you aided or abetted the Affected Attorney in the unethical conduct, or (2) the Affected Attorney was your client and you counseled or assisted in such criminal or fraudulent conduct. Whether you have an obligation to inform the Affected Attorney's former clients depends on your relationship with the Affected Attorney and the former clients. If you are the new attorney for the Affected Attorney's former client, and you fail to advise the client of the Affected Attorney's ethical violations, you may be exposed to the allegation that you have violated your ethical responsibilities to your new client.

**14. If I am authorized as a signer on the Affected Attorney's accounts am I also permitted to be counsel for the Affected Attorney?**

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an authorized signer on the Affected Attorney's accounts, you would have a duty to properly account for the funds belonging to the former clients of the Affected Attorney. This duty could be in conflict with your duty to the Affected Attorney if (1) you were hired to represent the Affected Attorney on issues related to the closure of the law practice and (2) there were misappropriations in the accounts and the Affected Attorney did not want you to disclose them to the former clients. To avoid this potential conflict of fiduciary interests, the most conservative approach is to EITHER be an authorized signer OR to represent the Affected Attorney on issues related to the closure of the practice. However, it is possible to do both, but extreme care should be taken by the Assisting Attorney to insure that any and all ethical obligations and rules of professional conduct are followed to limit any possibility of liability as a result.

**15. What is the source of funds necessary to pay the rent, utilities, telephone and support staff for the time necessary to conduct an inventory, file review/return and to close out the Affected Attorney's practice?**

This will be largely based upon the terms of the agreement entered into between the parties from the outset. However, it should definitely be appropriately discussed and a sufficient amount of funds set aside for the Assisting Attorney to fully and properly complete the duties assigned. The Affected Attorney should insure that the Assisting Attorney has knowledge of the source, location and availability of these funds.

**16. Naturally I will be required to sacrifice time away from my own practice during the time I spend closing out the deceased/disabled/abandoning attorney's practice. Will I be compensated for my services, and if so, how much and from what source?**

Again, this is largely governed by the terms of the agreement between the parties. Both the Assisting Attorney and Affected Attorney should insure this issue is properly addressed in the body of the agreement to avoid any confusion later. Regardless, the Assisting Attorney should keep a detailed accounting of time and out of pocket expenses. This will insure that any questions regarding payment for services are easily justified.

**SUBSECTION 4:**  
**CLOSING THE LAW OFFICE – SPECIAL COMMISSIONERS –WITHOUT**  
**PREPLANNING BY AFFECTED ATTORNEY**  
**FORMS AND CHECKLISTS**

**CHECKLIST FOR SPECIAL COMMISSIONER, ASSISTING ATTORNEY FOR  
CLOSING A PRACTICE OF AFFECTED ATTORNEY WHEN THERE HAS BEEN  
NO ADVANCED PROVISION**

*IMMEDIATELY (WITHIN 2 – 3 DAYS) UPON RECEIPT OF ORDER OF APPOINTMENT:*

⇒ Download from the Kentucky Bar Association website ([www.kybar.org](http://www.kybar.org)) copies of forms, letters, court documents and checklists that will assist you in closing out the affected attorney's practice.

⇒ Obtain several certified copies of Order of Appointment as you may be required to provide this to banks, post office, executor, malpractice carrier, landlord, utilities and others.

⇒ Identify and attempt to contact affected attorney's secretary, paralegal or other office personnel to ascertain whether that individual is willing and able to assist you in locating keys, account numbers, passwords, and in identifying landlords, accountants, utility supplies, outstanding invoices, banks, post office box numbers, and other information that you will require.

⇒ Collect keys, account numbers, passwords, landlord's and accountant's information, utility supplies, outstanding invoices, banks, post office box numbers, and other information that you will require to close out affected attorney's practice.

⇒ Contact landlord (if office is not owned by affected attorney) and utility companies to ascertain when payment is due and to make arrangements for access to affected attorney's office.

*FIRST WEEK:*

⇒ Check calendar for pending deadlines and urgent items.

⇒ Where deadlines and urgent items have been identified, petition the Court, in your capacity as a Special Commissioner, for enlargement of time so that the client may retrieve his/her file and retain substitute counsel.

⇒ Assemble or review list of affected attorney's active files/clients in order to perform conflict check.

⇒ For those conflicted clients, send clients letter informing them that they will need to pick up their file immediately and retain substitute counsel as you are unable to review the contents of the file for deadlines.

⇒ On a continuing basis, retrieve and open all unopened mail and email.

*FIRST TWO WEEKS:*

⇒ Perform review of non-conflicted client files to ascertain whether there are uncalendared deadlines, and to identify appropriate motions to withdraw as counsel.

- ⇒ Write to clients with active files, advising them that they need to retain new counsel, and advise them of pending deadlines. Explain how and when they should plan to retrieve their files.
- ⇒ Prepare appropriate releases for clients to sign upon receipt of their file, and written permission to destroy affected attorney's copy of file after a specified period of time.
- ⇒ Prepare appropriate checklists for items returned to clients.
- ⇒ Contact opposing counsel for matters where depositions, court appearances, discovery is due and set in order to obtain extensions of time. Get agreed orders where possible, or follow up with written confirmation of your agreement.
- ⇒ Place an announcement in the local paper, informing clients/former clients whom they may contact with questions regarding their accounts and files.

*WITHIN FIRST MONTH:*

- ⇒ Obtain client's permission to file motion to withdraw as counsel of record, or where they advise that new counsel has been retained, contact counsel for agreed order substituting counsel.
- ⇒ Make arrangements for telephone company to forward affected attorney's calls to different number once affected attorney's telephone is disconnected.
- ⇒ Complete appropriate forwarding forms with United States Post Office so that mail will be properly forwarded once affected attorney's post office box is closed.
- ⇒ Contact affected attorney's bank(s) and provide banks with certified copies of Order of Appointment, in order to determine whether the Order of Appointment will suffice to give you access to the affected attorney's accounts, or whether the bank(s) require a more specific order, in order to give you appropriate access. Draft appropriate motions where necessary.
- ⇒ Determine what, if any, long term leases, affected attorney has entered into (i.e. vehicle leases, internet, cloud storage, premises, advertising, etc.) and contact the lessor to make arrangements for terminating leases.

*WITHIN TWO MONTHS:*

- ⇒ Make sure client billing is current, with all payments made by clients and time for services performed by affected attorney, and expenses incurred by affected attorney posted to client accounts.
- ⇒ Send out final bills to clients, attempt to collect amounts due, and post final payments.
- ⇒ Reconcile bank account/general account from which monthly expense are paid, and obtain Court's permission to pay final expenses, where funds are available.

- ⇒ Perform review/audit of affected attorney's trust/escrow account.
- ⇒ Prepare full accounting to the Court, disclosing all discrepancies in client's trust accounts.
- ⇒ Petition Court for permission to distribute from trust/escrow account settlement proceeds/judgment awards that can clearly be identified as belonging to clients.
- ⇒ Contact Kentucky Office of Bar Counsel and affected attorney's malpractice carrier where it appears that affected attorney has stolen or misappropriated client fee accounts and/or settlements/judgment awards.
- ⇒ Where applicable, if probate action has been commenced, contact affected attorney's estate executor/administrator, in order to ascertain if he/she requires access to affected attorney's office in order to inventory furnishings/equipment, and for the exchange of other essential information.

*WITHIN THREE-FOUR MONTHS:*

- ⇒ Obtain copy of closed file list, or where unavailable, make inventory of closed files.
- ⇒ Make arrangements for long term storage of closed files.
- ⇒ Where possible, write letters to clients of closed files, giving them information regarding the retrieval of closed files and the length of time when the file will remain in storage prior to destruction.
- ⇒ Inform the Kentucky Bar Association where the closed files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA's online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).
- ⇒ Where appropriate, make arrangements for disconnection of utilities, internet, telephone, and for surrender of the premises to landlord.

*WITHIN SIX MONTHS:*

- ⇒ Ideally, you should be able to close out the affected attorney's practice within the six months. At the appropriate time, file a complete report with the Court detailing the activities you have performed, the disposition of each active client's case (whether you were able to reach them, whether they retrieved their files, whether an agreed order was entered substituting counsel, where unretrieved files are stored and who is responsible for safekeeping the file), as well as disposition of inactive client's files. Attach all charts you prepared for tracking the files. Prepare a full final accounting, including client accounts with outstanding balances that you were unable to collect. Provide a copy of the accounting to the affected attorney's probate estate where applicable. Move the Court for permission to be relieved from further duty to the Court in your capacity as trustee.

**PETITION FILED BY KBA – (Supplied Herein as General Information for the Special Commissioner)**

**KENTUCKY SUPREME COURT**

**ACTION NO: \_\_\_\_\_**

**IN RE: \_\_\_\_\_**

**PETITION FOR APPOINTMENT OF SPECIAL COMMISSIONER**

**\*\*\* \*\***

Comes now Petitioner, Kentucky Bar Association, by and through its Director, and petitions the Court, pursuant to SCR 3.395 and all other applicable law, for the appointment of a Special Commissioner of the Court, \_\_\_\_ Circuit Court, \_\_\_\_ Judicial Circuit, to protect the interest of the clients of \_\_\_\_\_, Defendant, and the Law Office of \_\_\_\_\_. In support of said petition, Petitioner states as follows:

1. Petitioner is an agent of the Kentucky Supreme Court, responsible for enforcing the rules and regulations of the Kentucky Supreme Court defining the practice of law in the Commonwealth of Kentucky and the code of professional responsibility and the discipline of its members.
2. \_\_\_\_\_ was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, admitted to practice law in the Commonwealth of Kentucky.
3. \_\_\_\_\_'s last known residential address is \_\_\_\_\_, \_\_\_\_ County, Kentucky \_\_\_\_\_.
4. \_\_\_\_\_'s last known principal office address of \_\_\_\_\_, \_\_\_\_ County, Kentucky \_\_\_\_\_.
5. Upon information and belief, \_\_\_\_\_, named herein above, (use one of the following) *[has been temporarily suspended from the practice of law, pursuant to SCR 3.165 and has failed to notify his/ her clients]* OR *[has been suspended or disbarred, pursuant to SCR 3.370 and has failed to notify his/ her clients]* OR *[has resigned pursuant to SCR 3.480 and has failed to notify his/ her clients]* OR *[has died]* OR *[has been declared incompetent]* OR *[has abandoned his/ her law practice or his/ her whereabouts are unknown.*
6. Upon information and belief, there is no law partner, power of attorney, [include next phrase only when attorney is believed to be deceased: *personal representative of the deceased attorney's estate*] or other responsible person known to exist who is capable of conducting \_\_\_\_\_'s business affairs as they related to the \_\_\_\_\_'s law practice.

7. Petitioner asserts that under the circumstances, the interests of \_\_\_\_'s clients are at unprotected and at risk.
  
8. Pursuant to SCR 3.395 (1), for good cause, as evidenced by the allegations in the Petitioner herein, the \_\_\_\_ Circuit Court, \_\_\_\_ Judicial Circuit, as the Judicial Circuit for \_\_\_\_\_'s last known [*business OR home*] address, may Order the Honorable \_\_\_\_\_, as Chief Circuit Judge of the \_\_\_\_ Judicial Circuit, to appoint one or more members of the Kentucky Bar Association to serve as a Special Commissioner of the Court, for the purpose of protecting \_\_\_\_\_'s clients interests.

**WHEREFORE**, for the reasons stated herein above, Petitioner prays of this Court entry of an Order as follows:

1. Ordering the Chief Judicial Judge for the \_\_\_\_ Judicial Circuit to appoint one or more qualified members in good standing of the Kentucky Bar Association to serve as Special Commission(s) of the Court for the purpose of protecting the interest of third parties identified as clients of Defendant, \_\_\_\_\_, and the Law Office of \_\_\_\_\_.

Respectfully submitted,

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DIRECTOR, KENTUCKY BAR ASSOCIATION

**ORDER ISSUED BY SUPREME COURT DIRECTING CHIEF REGIONAL JUDGE TO APPOINT SPECIAL COMMISSIONER (Supplied Herein as General Information for the Special Commissioner)**

**KENTUCKY SUPREME COURT  
ACTION NO: \_\_\_\_\_**

IN RE: \_\_\_\_\_

**ORDER DIRECTING APPOINTMENT OF SPECIAL COMMISSIONER**

**\*\*\* \*\***

The matter came before the Kentucky Supreme Court on petition of the Petitioner, Kentucky Bar Association, pursuant to SCR 3.395, for the appointment of Special Commissioners to protect the interest of clients of \_\_\_\_\_, and the Law Office of \_\_\_\_\_. The Court having reviewed the record in its entirety and being otherwise fully and sufficiently advised, makes the following findings of fact, conclusions of law, judgment and order.

**Findings of Fact**

1. \_\_\_\_\_ was licensed to practice law in the Commonwealth of Kentucky on or about \_\_\_\_\_.
2. \_\_\_\_\_ and has a principal business address of \_\_\_\_\_.
3. \_\_\_\_\_, (use the one that applies: *[has been temporarily suspended from the practice of law, pursuant to SCR 3.165 and has failed to notify his/her clients]* OR *[has been suspended or disbarred, pursuant to SCR 3.370 and has failed to notify his/her clients]* OR *[has resigned pursuant to SCR 3.480 and has failed to notify his clients]* OR *[has died]* OR *[has been declared incompetent]* OR *[has abandoned his/her law practice or his/her whereabouts are unknown]*).
4. \_\_\_\_\_, has no law partner, power of attorney, [include next phrase only when attorney is believed to be deceased: *personal representative for the estate of \_\_\_\_\_*] and no other responsible person known to exist who is capable of conducting \_\_\_\_\_'s business affairs as they related to \_\_\_\_\_'s law practice.
5. The interests of \_\_\_\_\_'s clients are unprotected and at risk.
6. Petitioner has demonstrated good cause in support of its petition for appointment of Special Commissioner, as evidenced by the allegations in the Petitioner's Petition.

**Conclusions of Law**



**CHIEF REGIONAL JUDGE'S ORDER APPOINTING SPECIAL COMMISSIONER**

**COMMONWEALTH OF KENTUCKY**

**\_\_\_ JUDICIAL CIRCUIT**

**\_\_\_ CIRCUIT COURT**

**DIVISION \_\_\_\_\_**

**ACTION NO: \_\_\_\_\_**

**IN RE: \_\_\_\_\_**

**ORDER APPOINTING SPECIAL COMMISSIONER**

**\*\*\* \*\***

The matter being before the Chief Judicial Judge of the \_\_\_\_\_ Judicial Circuit, by Order of the Kentucky Supreme Court, entered on \_\_\_\_, 20\_\_\_\_, ordering the appointment of one or more Special Commissioners to protect the interest of clients of \_\_\_\_\_, and the Chief Judicial Judge having reviewed the record in its entirety and being otherwise fully and sufficiently advised;

**IT IS HEREBY ORDERED** as follows:

1. \_\_\_\_\_, being a member in good standing of the Kentucky Bar Association, with a principal business address of \_\_\_\_\_, *[WHEN MORE THAN ONE COMMISSIONER IS APPOINTED ADD THE FOLLOWING LANGUAGE: and \_\_\_\_\_, also a member in good standing of the Kentucky Bar Association, with a principal business address of \_\_\_\_\_]* is hereby appointed as Special Commissioner of the \_\_\_\_\_ Circuit Court;
2. Special Commissioner is hereby authorized to take possession of the files and records of \_\_\_\_\_, to make an inventory of the files, to give notice to \_\_\_\_\_'s clients of the unavailability and/or inability of \_\_\_\_\_ to continue to represent said clients, to deliver to the clients of \_\_\_\_\_, all papers and other property to which clients are entitled, to take any other action to which clients are entitled, and to take any other action which the Court deems necessary to protect the interest of the clients of \_\_\_\_\_.
3. Special Commissioner shall not disclose any information contained in any files which are the subject of an inventory without the consent of the client to whom such files relate, except as reasonably necessary to carry out the orders of the Court.
4. Special Commissioner shall within six (6) months of entry of this Order file with the \_\_\_\_\_ Circuit Court a written report containing a summary and explanation of the actions taken by the Special Commissioner to fulfill the duties assigned to the Special Commission by the Court.

5. Special Commissioner may for good cause shown before the expiration of six (6) months, petition the Court for enlargement of time which to file his/her written report summarizing and explaining his/her actions taken to fulfill his/her duties assigned by the Court.
  
6. At the time of filing said written report, or within a reasonable time thereafter, Special Commissioner may move the Court for reasonable compensation and for reimbursement for necessary expenses actually incurred, provided however that said motion includes an itemized list of time spent on the matter, a description of the work performed, and receipts for expenses actually incurred.

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

\_\_\_\_\_  
 JUDGE \_\_\_\_\_  
 CHIEF CIRCUIT JUDGE  
 \_\_\_\_\_CIRCUIT COURT  
 \_\_\_\_\_JUDICIAL CIRCUIT

**CLERK'S DISTRIBUTION:**

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 Special Commissioner for the  
 \_\_\_\_ Judicial Circuit

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 \_\_\_\_\_, Kentucky \_\_\_\_\_

\_\_\_\_\_, Director  
 Kentucky Bar Association

\_\_\_\_\_  
 Frankfort, Kentucky \_\_\_\_\_

\_\_\_\_\_, Chief Circuit Judge  
 \_\_\_\_ Judicial Circuit

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 \_\_\_\_\_, Kentucky \_\_\_\_\_

\_\_\_\_\_, [*Affected Attorney when not deceased or next of kin when deceased*]

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## **ANSWERS TO FREQUENTLY ASKED QUESTIONS FOR SPECIAL COMMISSIONER WITHOUT PREPLANNING**

The following questions serve as guidance for a Special Commissioner during the course of closing another attorney's without preplanning in place. Any individualized questions not covered in this section should be directed to the Kentucky Bar Association for assistance, and guidance. Additionally, the Kentucky Bar Association could provide multiple forms and additional documents for guidance in the closure of the office.

- 1. To whom do I owe a duty/obligation? Does it lie with the clients/former clients of the Affected Attorney, with the Affected Attorney or his/her estate, with the Kentucky Bar Association, or with another party?**

Your obligation lies to the Court from which you were appointed to close out the practice. Read closely the order that appointed you and perform the duties outlined in the order. If you are unclear as to what your duty or obligation in a given situation, ask the Court for clarification. Remember, you are not in privity of contract with the Affected Attorney and have no duty not to disclose potential malpractice, stolen or misappropriated unused fees or settlements.

Please also see SCR 3.130-8.3.

- 2. Must I notify the former clients of the Affected Attorney if I discover a potential malpractice claim against the Affected Attorney?**

In many cases, it is not your responsibility to unilaterally make a judgment call as to whether the Affected Attorney committed malpractice. You should contact the Office of Bar Counsel (See SCR 3.130-8.3) and the Affected Attorney's malpractice carrier if one existed for the applicable period, and disclose the information which leads you to believe that malpractice occurred.

- 3. If the Affected Attorney's clients ask questions about the nature of the attorney's death, abandonment or disability, how much am I am liberty to disclose?**

You are not at liberty to disclose any information to the attorney's former client regarding circumstances of the attorney's absence from the practice of law beyond that information which is "public record." This may include the information that has been published in the local newspaper, i.e., automobile accidents, funeral arrangements and obituary. For disabled or injured attorneys, you may not disclose the facility where the disabled attorney is receiving medical treatment, unless the disabled attorney's next of kin/family consents. You may want to inquire of the family where cards, letters flowers and condolences and get well wishes should be sent. For the abandoning or suspended attorney, you may not disclose the reason

for the attorney's unavailability beyond that which is public record, or public reprimand. To do otherwise, could expose you to potential defamation charges or litigation for violating HIPAA or otherwise protected information. In addition, you risk coming across as "gossiping" about your colleague, which will place you in a bad light, and subject you to risk of potential litigation. Be careful not to "hint" at the nature of the disability, as this is dangerous in itself when dealing with the client with a "vivid imagination."

**4. What protection do I have under the Affected Attorney's malpractice insurance coverage if I am appointed as Special Commissioner to close and wind up the practice of the Affected Attorney?**

A thorough review of the malpractice policy must be undertaken to check the definition of "Insured." Most policies define "Insured" as both the firm and the individual lawyers employed by or affiliated with the firm. It typically is broadened to include past employees and "of counsel" attorneys. Additionally, most professional liability policies specifically provide coverage for the "estate, heirs, executors, trustees in bankruptcy and legal representatives" of the Insured as additional parties covered under the policy. However, the best insurance is the Special Commissioner's own malpractice policy covering such a situation.

**5. What exposure do I have as a Special Commissioner under my own malpractice coverage? What steps should I take if I undertake the role to assist in the closure of an office by death, abandonment or disability?**

A Special Commissioner should immediately review their own policy and contact their carrier to establish the parameters of any exposure from their role as Special Commissioner. Likewise, the Special Commissioner should insure there is no exclusion under their individual policy or additional requirements necessary to invoke coverage under the policy. Additionally, the Special Commissioner should inquire whether there is an appropriate rider available for protection if necessary.

**6. May I undertake the representation of the deceased/disabled/abandoning attorney's client or clients through my own law firm?**

Generally, yes, but this depends on the authority given to you in the Order Appointing you as Special Commissioner and the nature of your appointment. If permitted to do so by the Court, you may offer to represent the client, assuming doing so does not violate a rule of professional conduct, they execute the appropriate releases and consents and request that you undertake their representation. Be advised, this will expose you to potential liability where none existed previously. Also, you would be advised to obtain a waiver of conflict of dual representation from the client of the law firm for which you have now been appointed

as special commissioner, as potential conflicts may arise you cannot anticipate. (Please see SCR 3.130-1.7.) You would be advised to inform the Court that appointed you as Special Commissioner which of the Affected Attorney's former clients you intend to represent through your own firm. You should not undertake the client's representation in a potential malpractice case against the deceased attorney's estate or against the Affected Attorney, as you have been privy to that attorney's case files and may be the party who brought the attorney's potential malpractice to light.

**7. What must I do during the process of reviewing the Affected Attorney's files when I discover there is a conflict between myself or my firm and the Affected Attorney's client?**

One of the first steps you should take upon accepting the appointment as Special Commissioner is to create a client list of the Affected Attorney's clients and perform an initial conflicts check before delving in to the substance of the client's file. Do this in much the same manner that you would perform such a conflicts check in your own firm. Make a list of those files where a conflict or potential conflict exists, do not review those files for content, and do not review billing to the client. For those clients you may still contact the client to inform of the death/disability or absence from the practice of law of their attorney, and offer to arrange for those clients to retrieve their file. When you are able to reach the clients and they want to retrieve their file, it may be prudent to have a staff member, or someone other than yourself meet the client for the purpose of delivering their file to the client. In this way, there can be no question as to whether you have looked at their case file. You will want to inform those conflicted clients that you were unable to review their files for pending or missed deadlines, and for unused fees or billing account balances. For those conflicted clients that do not retrieve their files immediately, make a list, then petition the court that appointed you Special Commissioner for guidance and the discussion of deadlines and fee balances and the disposal and disbursement of all necessary documents regarding each individual file.

**8. What should I do with the files that I have not been able to return to clients? Am I required to preserve or store them for a specified period of time?**

You are responsible for preserving those files for a period of time. (Please see Ethics Opinion KBA E-436.) Make a list of those you are unable to return to the client/former client. If you have space at your own storage facility, store the files there. Otherwise, rent storage space in which to store those files, even if you have to do so at your own expense. A good rule of thumb is to plan on retaining the files for at least 5 years. There is one line of thought that delineates the length of time in which you are required to retain a file, depending on the kind of action or nature of the case. Since complex actions involve more than one cause action or could be classified from a number of perspectives, and because it is more difficult to manage preservation

of files if you have a different rule for files of different types, determine the longest period of time you would be required to protect and preserve a file and then keep all files for that period of time. Inform the Kentucky Bar Association where the files will be stored and the name, address, and phone number of the contact person for retrieving those files by completing the KBA's online form located at [www.kybar.org/filestorage](http://www.kybar.org/filestorage).

For your own protection, prior to disposing of any files, seek an order from the court permitting you to do so. Once you have an order from the court listing the files that you may dispose of, you still must do so in a responsible manner. Do not simply place the files in the trash or on the curb on trash day. Make arrangements to have the files burned or shredded by a responsible party.

**9. What procedures should I follow for distributing the funds that remain in the trust account of the Affected Attorney?**

If your review or an authorized signer's review of the Affected Attorney's trust account indicates there may be conflicting claims to funds in the account, you should initiate a procedure for distributing the existing funds, such as an interpleader action in the appropriate venue. If there is a clear shortfall in the available funds, it may be wise to contact the Kentucky Bar Association and instill their services.

**10. During the process of auditing the trust account and comparing it with the amount that is should be in the client's fee accounts, I have discovered the Affected Attorney potentially stole or misappropriated the client's unused fees. Am I obligated to inform either the client/former client, the Court, or the Kentucky Bar Association?**

If you are also responsible for reviewing the Affected Attorney's client files, do that first, before determining whether or not there are funds missing. It could be work was performed by the attorney for which time tickets still need to be posted to the client's billing account. Conversely, the complete file review should also disclose whether the Affected Attorney had received a settlement or judgment that should have been deposited in the trust/escrow account and distributed to the client, but for whatever reason it was not. Once you have completely reviewed the trust/escrow account, client billing accounts and client files, you should make a complete accounting to the court that appointed you of the trust/escrow account(s) identifying discrepancies in client fee accounts on a client-by-client basis.

**11. During the process of conducting an initial file review, I discover that a deadline is about to run. Am I required to take action to file the pleading on behalf of the client before the deadlines runs?**

To the extent of filing a substantive pleading on the merits of the case, the answer is "no," unless the Affected Attorney's former client has retained you and your firm for representation in

the matter. To do so otherwise would be tantamount to attempting to practice each of the Affected Attorney's cases as if you were attorney of record, and could expose you to liability for which you may not otherwise be exposed. You should make every attempt to return the client's file before the deadline runs and impress upon the client the deadline and significance of missing the deadline, encouraging the client to immediately retain counsel before the deadline has run. If there is insufficient time to return the file to the client before the expiration of a pending deadline, while you are not under an obligation to file substantive pleadings on behalf of the Affected Attorney's client, you should enter your limited appearance as trustee for the Affected Attorney's law practice for the purpose of seeking enlargement of time on behalf of the client if their deadline has not run, or in the alternative if the deadline has already run, leave of the Court to permit the client to file a belated pleading, once substitute counsel is retained. Further, you may want to contact the opposing party or their counsel and request a tolling agreement.

**12. If I become aware of an ethical violation must I inform the Affected Attorney's clients or other entities?**

Again, this depends largely on the relationships established between all parties by the charging order of the court that appointed you. Your obligation as Special Commissioner lies with the court that appoints you to close out the practice. You should carefully read the order and perform only those duties outlined in the order. If you are unclear or need guidance, you should ask the court for clarification. You are not in privity of contract with the Affected Attorney and have no duty not to disclose potential ethical violations.

**13. Do I have authority to access/distribute/refund funds from the Affected Attorney's trust/escrow account(s)?**

Assuming the order that appoints you grants you that authority, then yes, but only after a complete accounting has been performed, and all discrepancies and deficiencies brought to the court's attention. It is not for you to reimburse the Affected Attorney's clients upon demand by the client, or in a first-come/first-serve basis. You should perform a complete audit of the account, taking into consideration settlements and judgments, as well as work which had been performed by the Affected Attorney but which had not been posted against the client's fee account. Only after giving the court a detailed accounting, on a client-by-client basis, and seeking an order from the court with regard to specific amounts of disbursements from the client's trust/escrow account should you then proceed. Further, when there are insufficient funds available, you should seek an order from the court with regard to pro rata distribution to the clients.

**14. What is the source of funds necessary to pay the rent, utilities, telephone and support staff for the time necessary to conduct an inventory, file review/return and to close out**

**the Affected Attorney's practice?**

This will largely be determined by the court that appointed you. It could be possible for you as Special Commissioner to make a request of the Affected Attorney's estate, if available. Regardless of the available funds, you should account for all your unpaid account balances and expenses and report to the court that appointed you. The court should then authorize or otherwise order where the necessary funds shall be obtained.

**15. Naturally I will be required to sacrifice time away from my own practice during the time I spend closing out the Affected Attorney's practice. Will I be compensated for my services, and if so, how much and from what source?**

You should again look for guidance on this issue to the court that appointed you. You should keep a detailed accounting of your time and out of pocket expenses. It might be prudent and wise to file a claim against the Affected Attorney's estate, if available, and not otherwise compensated by the court.

**SUBSECTION 5:  
QUESTIONS AND ANSWERS FOR THE CLIENT**

## **ANSWERS TO FREQUENTLY ASKED QUESTIONS FOR CLIENTS OF PLANNING/AFFECTED ATTORNEY**

The following questions serve as guidance for a client/former client in the event of a closing of their former attorney's office either through death, disbarment, abandonment or disability.

**1. Will another attorney be automatically appointed by the court or the Kentucky Bar Association to represent me and to take over my case upon the death or disability of my attorney?**

No. The Circuit Court in the judicial circuit where your attorney's primary office was located will appoint a "special commissioner" or "assisting attorney" to coordinate closing your attorney's law practice. If your attorney has passed, the appointment may be made through the District Probate Court. The appointed attorney will assist you in the return of your file. It is your responsibility to retain substitute counsel to practice your case.

**2. Am I entitled to the return of my unused fee, paid to my attorney during representation of me?**

Yes, but please be patient. You may not receive your refund immediately at the time you initially contact the appointed attorney. You should collect all of your billing records, fee agreement, and receipts for payment of fees that you received from your attorney during representation of you. Request a meeting with the individual who has been appointed to close out your attorney's law practice, and take all billing documents with you. Once a review of your former attorney's trust/escrow account has been performed, and the court has authorized a trustee access to your former attorney's trust account, you are entitled to a refund of your unused fee.

**3. Am I entitled to my file? What do I need to do to obtain the file?**

Yes, you are. The Court will appoint an attorney called a "special commissioner" or an "assisting attorney" whom has a previous agreement with your former attorney to close out the practice. That attorney should contact you if he/she has not done so already. That attorney will provide you with information as to when your file will be available to you, and will provide you with a form for you to complete authorizing the release of your file, either directly to you or to your new attorney, if you have retained one. If you have not been contacted, then take the initiative. Call your former attorney's office. If there is no answer, make a trip to the office to determine if there is anyone present, or instructions posted on the door stating when your file will be available. If you are still unsuccessful in contacting anyone about the return of your file, then contact the Circuit Court Clerk's office in the county where your former attorney's principal office was

located and ask for the name of the attorney who has been appointed by the Court as the “special commissioner” responsible for closing out your attorney’s law practice. If no one has been appointed, you may contact the Kentucky Bar Association, Office of Legal Counsel to inquire further as to the status of your former attorney’s office. Of course, the original documents and other original property that you provided to your former attorney can only be retrieved from that attorney’s office. However, if you need immediate access to the official record containing pleadings, you may be able to obtain that even before contacting the individual who is responsible for closing out your former attorney’s office. You may obtain those records by making a trip to the District/Circuit Court Clerk’s office where your case was filed, or if you have retained substitute counsel, your new attorney will be able to obtain from the District/Circuit Court Clerk a copy of all pleading that have been filed in your case.

**4. What if I know that there is a pending deadline in my case, and no special commissioner or assisting attorney has been appointed? Will I be penalized for missing the deadline?**

You could be. It depends, first on the nature of the deadline, the court where the deadline is pending and the willingness of opposing counsel to accommodate you and your efforts to avoid missing the deadline. Try to retain substitute counsel as soon as possible to make sure that your deadline does not run. If you do not have the time to do that before the expiration of your deadline, then make your best effort to draft your own motion seeking the Court’s permission for enlargement of time, or to toll the statute, due to the death or disability of your attorney. File it with the appropriate clerk, and send a copy to the opposing party or their attorney if they have one. You may also want to contact the opposing party’s counsel and request a tolling agreement or agreed order for enlargement of time.

**5. What if I learn that my former attorney potentially committed malpractice, missed filing deadlines, or misappropriated or stole my fee? What should I do? To whom should I notify?**

You should report this to the Kentucky Bar Association. You may file a complaint against your former attorney by going to the [www.kybar.org](http://www.kybar.org) website and downloading the Complaint Form. You may also call the Kentucky Bar Association, explain your situation and ask to speak to Office of Bar Counsel. You may also consider consulting with a private attorney for the purpose of filing a legal malpractice case against your former attorney or his/her estate. In addition, a private attorney may be able to assist you in determining whether your former attorney carried legal malpractice insurance.

