

Lawyer Death and Disability Planning Seminar



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Caveat

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Attorney Death and Disability Planning

April 2017

Iowa State Bar Association

Introduction

The demographics of Iowa's private practitioner community suggest that death or disability of sole practitioners will be common in coming years. Recent changes in court rules, notably Iowa Court Rule 45.11 and Iowa Court Rule 39.18, are intended to help address these situations. The purpose of this outline is to assist Iowa practitioners in implementing these new rules and in preparing their practices for maintenance, closure, or sale incident to their death or disability.

The primary focus of this outline is on planning by sole practitioners. Issues in practice administration occur less frequently with respect to attorneys practicing as a member or employee of a firm. However, a firm also can plan to ease transition of the practice when an attorney member or employee becomes disabled or dies. The provisions of rule 39.18 accordingly require all private practitioners to make the same designations as sole practitioners.

Why Planning for Death or Disability Makes Sense

Planning for the effect of death or disability on your practice is appropriate and necessary for ethical, personal, and professional reasons.

Once representation of a client has been undertaken, an attorney has an ethical duty of diligence. The duty of diligence includes planning to safeguard client interests in the event the attorney no longer is able to practice due to death or disability. *See* Iowa R. Prof'l Conduct 32:1.3, cmt. 5.

Effective December 25, 2017, an Iowa attorney in private practice (including an attorney practicing in a firm with other attorneys) is required to accomplish at least the "first tier" planning requirements of Iowa Court Rule 39.18.

An attorney has an obligation to take appropriate action to safeguard the confidences of clients upon the attorney's death or disability. Iowa R. Prof'l Conduct 32:1.6, cmt. 18; Iowa R. Prof'l Conduct 32:1.9.

Contingency plans for your extended absence may be a condition of coverage by an attorney's professional liability insurance carrier, or at least a consideration in the insurer's issuance of coverage.

If an attorney is temporarily disabled, preserving the viability of the practice pending resolution of the disability may be in the attorney's economic interest. If the attorney is permanently disabled or deceased, planning may assist in transfer of the practice to another attorney. See Iowa R. Prof'l Conduct 32:1.17 (sale of practice may include good will).

Planning may ease the burden of winding up or selling the practice on surviving family members.

Law practices not prepared for the practitioner's disability or death have been a source of claims against the Client Security Trust Fund, generally based on retainers inadequately accounted for. In addition, trustee claims for compensation and expenses often are submitted to the Client Security Commission for payment. Planning and an orderly practice transition can reduce claims, help maintain the fund balance, and reduce the frequency of special assessments.

Finally, effecting a smooth transition for clients following death or disability demonstrates professionalism and competence as a practitioner.

Iowa Rules

Until 2005, no Iowa rule specifically required that practicing attorneys prepare their practices for maintenance, closure, or sale incident to their disability or death. The Iowa Rules of Professional Conduct, adopted in 2005, now address the requirement:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Iowa Ct. Rs. 35.17(6), 35.18 (where reasonable necessity exists, the local chief judge shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

Iowa R. of Prof'l Conduct 32:1.3, cmt. 5.

Iowa Court Rule 39.18 provides more detailed guidance regarding the duty to plan for death or disability. The rule originally was adopted in 2015, but implementation was delayed to permit study by the Iowa State Bar Association. The bar association study resulted in a revised rule that will be effective

December 25, 2017, for the annual client security report filing due in March of 2018. The revised rule creates a mandatory “first tier” of succession planning that all attorneys in private practice in Iowa will be required to complete as part of the annual client security report. The mandatory “first tier” is focused on tasks essential to protecting the interests of clients. The revised rule allows Iowa practitioners to adopt an optional written plan, in which the attorney may provide further guidance and authority, primarily for law firm management and administrative tasks. Text of the revised rule 39.18 is included at Appendix A.

Several other rules suggest obligations to clients upon disability or death:

Iowa Rule of Professional Conduct 32:1.5(e) (Fees). An attorney should not divide a fee for legal services with another attorney who is not in the same firm, absent disclosure to the client of the arrangement, and consent by the client confirmed in writing. Depending on the terms of your written plan or agreement regarding the scope of duties and compensation of the designated attorney, the disclosure and consent contemplated by rule 32:1.5(e) may be required at some point during your designated attorney’s administration of your practice.

Iowa Rule of Professional Conduct 32:1.9(c)(2) (Confidentiality of Information). An attorney may not reveal information relating to representation of a former client except as the ethics rules otherwise permit or require with respect to a client. Arguably the requirement to formulate a backup plan falls within the exception for disclosures permitted or required by the ethics rules, so that your clients’ written, informed consent to your designated attorney accessing their confidential information is not required. Nonetheless, disclosure of the existence of the backup agreement to clients in your standard fee agreements or engagement letters may be prudent.

Iowa Rule of Professional Conduct 32:1.16 (Declining or Terminating Representation). An attorney must withdraw from representation of clients when his or her mental or physical condition materially impairs his or her ability to represent the client. The withdrawal may require permission from the tribunal where any action on behalf of the clients may be pending. The withdrawal also triggers obligations to reasonably notify the client, return papers and property to them, and refund any unearned advance fees.

Iowa Rule of Professional Conduct 32:1.17 (Sale of Law Practice). This rule prescribes how a law practice may be sold by one attorney to another, and includes good will as a saleable component of a law practice. Comment 13 to the rule contemplates sale of a practice by a non-attorney representative, such as the estate of a deceased attorney, and implies that the purchasing attorney is obligated to ensure that the rule is observed even though the seller is not an attorney.

Opinion 78-30, Iowa Board of Professional Ethics and Conduct, Disposition of Files of Deceased Lawyer (1978). Opinion 79-72, Iowa Board of Professional Ethics and Conduct, Deceased Partner's Files – Disposition or Retention (1979). Both opinions place responsibility for proper disposition of client files on the executor of the deceased attorney's estate. The opinions appear to contemplate notice to the clients and an opportunity for a client to retrieve the client's file before the file may be destroyed. If no address is available for a particular client, the opinions specify retention of that client's file for a period of five years after notice, before the file may be destroyed.

Opinion 08-02, Iowa State Bar Association Committee on Ethics and Practice Guidelines (2008). This opinion recommends creation of a written file destruction policy, disclosure of the file destruction policy in engagement letters and closing letters, and a final notice before destruction of a client file. The opinion suggests sample disclosure or notice language.

As noted in comment 5 to rule 32:1.3, our rules also provide a framework for judicial supervision of a practice when an attorney has not planned for disability or death.

Iowa Court Rule 34.17. (Disability Suspension). Iowa Court Rule 34.17 provides for suspension of an attorney's license to practice upon disability, and for appointment of a trustee to protect the interests of clients and other affected persons. The principal duty of the trustee is to protect the interests of the disabled attorney's clients. The trustee has little if any duty to protect the interests of the disabled attorney, and the trustee's actions generally will not preserve the disabled attorney's practice during the suspension period. Rule 34.17 was amended effective December 25, 2017, to require the district chief judge to consider a standby nomination made by the disabled attorney under rule 39.18 if appointment of a trustee is necessary.

Iowa Court Rule 34.18. (Death, Suspension, or Disbarment of Practicing Attorney). Iowa Court Rule 34.18 provides for appointment of a trustee to protect the interests of clients and other affected persons upon the death, disbarment, or suspension of an attorney, provided reasonable necessity exists. Here also, the principal duty of the trustee is to protect the interests of the dead or suspended attorney's clients. The trustee's actions generally will not protect the interests of the deceased or suspended attorney or the deceased attorney's estate or preserve the value of the practice for the estate or for sale. Rule 34.18 was amended effective December 25, 2017, to require the district chief judge to consider a standby nomination made by the deceased, suspended, or disbarred attorney under rule 39.18 if appointment of a trustee is necessary. Also, an attorney or entity designated under rule 39.18 now will be permitted to apply for appointment of a trustee. This change complements a provision in the new rule 39.18 which allows the designated attorney or entity to seek appointment of a trustee at any time.

Iowa Court Rule 45.11 (Designation of Successor Signatories). Iowa Court Rule 45.11 allows an attorney who is the sole attorney signatory on a trust account to designate a successor signatory, whose authority becomes effective upon the occurrence of an event described in the designation. Possible events include death, disappearance, abandonment of the practice, incapacity, suspension, or disbarment. The successor signatory must be a member of the Iowa bar in good standing. Rule 39.18 provides that an attorney or entity designated under the provisions of that rule also is authorized to serve as a successor signatory under rule 45.11.

Death and Disability Practice *Before* Iowa Court Rule 39.18

What Currently Happens at Death if No Succession Plan Exists

Three courses of action have been used for disposition of the practice of a deceased sole practitioner if no succession planning has occurred.

Iowa Probate Code. The first course of action is to proceed under the Iowa probate code. The personal representative of the deceased attorney appears to have authority to administer the practice as part of the general administration of the decedent's estate. Iowa Code § 633.350; *see* Ethics Op. 79-72. The personal representative would be entitled to assistance from the attorney engaged to assist in administration of the estate. Iowa Code § 633.82. A special appointment of another attorney to assist with administration of the practice would be possible under Iowa Code section 633.84 (delegation of authority to outside specialists with court approval).

Iowa Court Rule 34.18. A second course of action is to petition for appointment of an attorney (or attorneys) as trustee or trustees to administer the practice under Iowa Court Rule 34.18.

An application for the trustee appointment under rule 34.18 may be made on behalf of the Attorney Disciplinary Board or the county bar association. The application must show that the attorney involved has died, and that reasonable necessity exists for appointment of a trustee.

Authority for the appointment is placed with the chief judge in the district where the deceased attorney practiced. The appointment by the chief judge is subject to confirmation by the Supreme Court. Thereafter, the trusteeship is supervised by the chief judge through final report and closure. Closure of the trust is appropriate when all pending representation of clients has been completed, or the purposes of the trust otherwise have been accomplished. The trust must be terminated by an order of the appointing chief judge.

Informal Administration. If knowledgeable law firm staff members are available to assist and the deceased attorney's family is supportive, it sometimes is possible to close a law practice without court supervision. This approach appears to be most suitable when a non-attorney family member, such as a spouse, has been a long-term, integral part of the law firm staff. Another attorney known to the family often assists with informal administration. Even under this approach it still may be necessary to seek a trustee appointment under rule 34.18 for the limited purpose of administering and closing the deceased attorney's trust account, as the decedent may have been the only account signatory, or the depository bank may not recognize the authority of any signatory who survives the decedent.

Comparing the Courses of Action. The courses of action offer different advantages and features, and are not mutually exclusive. In recent years, one or more of the courses of action have been employed in concert. The considerations in selecting the proper course or courses of action include the following:

The trustee's duty to protect the interests of the clients is narrower than the duties of a fiduciary for a deceased attorney's estate. For this reason, trustees sometimes can move more quickly to advise active clients of their need to engage new counsel, distribute trust account balances to those persons entitled to them, and distribute files to clients.

Trustees do not attempt to preserve the practice for sale, collect receivables, or address dissolution of the business aspects of the practice. Absent use of a parallel course of action by the decedent's survivors, a trusteeship generally dismembers the client base of the practice and may reduce the value of the practice remaining for the decedent's estate.

The allowable fees and expenses of a trustee are to be paid first from the decedent's estate. It appears the trustee's fees and expenses are entitled to administrative priority. See Iowa Code § 633.425(2) (other costs of administration). If the trustee cannot be paid from the estate, the Client Security Commission has authority and discretion to pay those fees and expenses. If there is any concern regarding the solvency of the estate, a trustee appointment under rule 34.18 therefore offers a second avenue for compensation of the trustee even if formal probate is undertaken also.

Administration of the law practice through formal probate, with the appointment of professional assistance if required, offers more encompassing authority than a trustee appointment. In

addition to the tasks normally undertaken by a trustee to protect the interests of clients, representatives of the estate can attempt to sell the physical assets and good will of the practice, collect earned but unpaid fees including the value of work performed but unbilled at the time of the decedent's death, and dissolve the business aspects of the practice. If one professional handles these tasks in addition to those normally undertaken by a trustee, the overall cost to the estate may be reduced. Use of the probate process may be especially attractive if a likely purchaser of the practice is readily available.

Informal administration of a law practice generally is dependent on knowledgeable, experienced staff members or family members available to assist. As the nature of law practice becomes less reliant on staff support and more reliant on attorney technology skills, it seems less likely that informal administration will be a viable alternative. Informal administration also depends on the willingness of third parties to recognize authority of the staff or family members. In those instances where informal authority is insufficient, resort to a trusteeship or formal probate proceeding may be required.

What Currently Happens Upon Disability if No Succession Plan Exists

Three courses of action also are available for administration of the practice of a disabled practitioner if no succession planning has occurred. The considerations in selecting these courses of action are similar to the considerations applicable to administration of the practice of a deceased practitioner.

Iowa Court Rule 34.17. The course of action commonly used to administer the practice of a disabled sole practitioner, if no succession planning has occurred, is appointment of an Iowa attorney (or attorneys) as trustee or co-trustees under the provisions of Iowa Court Rule 34.17. Rule 34.17 provides a two-step process, the first of which is the disability suspension of the practitioner, which then prompts the appointment of a trustee.

An application to the Supreme Court for the disability suspension of an Iowa lawyer may be made on behalf of the Attorney Disciplinary Board or the county bar association. The application must show that the attorney involved is not discharging professional responsibilities, due to disability, incapacity, disappearance, or abandonment of the practice. The Supreme Court also may enter a suspension order based on the certification by any clerk of court in Iowa that an attorney has been adjudicated mentally incapacitated, an alcoholic, a drug addict, or has been committed to a hospital or institution for treatment.

Upon notification that a disability suspension has been ordered by the Supreme Court, an appointment of trustee *shall* be made by the chief judge in the district where the disabled attorney practiced. The appointment by the chief judge is subject to confirmation by the Supreme Court. Thereafter, the trusteeship is supervised by the chief judge through final report and closure. Closure of the trust is appropriate once the disabled attorney has been reinstated to practice, or all pending representation of clients has been completed, or the purposes of the trust otherwise have been accomplished. The trust may be terminated by order of the appointing chief judge.

Conservatorship Under Probate Code. Another course of action is appointment of a conservator under the provisions of Iowa Code section 633.566. An application for appointment of a conservator must show that the proposed ward's decision-making capacity is so impaired that he or she is unable to make communicate, or carry out important decisions concerning the person's financial affairs. Iowa Code § 633.556(2)(a). As is the case in a formal probate proceeding, the conservator would be would be entitled to assistance from the attorney designated to assist in administration of the conservatorship. Iowa Code §§ 633.82, 633.649. Similarly, a special appointment of another attorney to assist with administration of the practice would be possible under Iowa Code section 633.84 (delegation of authority to outside specialists with court approval).

Informal Administration. If knowledgeable law firm staff members are available to assist and the disabled attorney's family is supportive, it sometimes is possible to administer a disabled attorney's law practice without court supervision. This approach appears to be most suitable when a non-attorney family member, such as a spouse, has been a long-term, integral part of the law firm staff. Another attorney known to the family often assists with informal administration. Even under this approach it still may be necessary to seek a disability determination and trustee appointment under rule 34.17 for the limited purpose of administering and closing out the disabled attorney's trust account, as the disabled attorney may have been the only account signatory. A disability determination and trustee appointment also may be necessary if the disabled attorney refuses to cooperate with, or resists, informal administration.

Duties of the Trustee Appointed under Iowa Court Rules 34.17 or 34.18

Under both Iowa Court Rule 34.17 and Iowa Court Rule 34.18, the overarching purpose of the trust is to protect the interests of clients and other affected persons. Both rules describe the trustee's tasks as inventorying files, sequestering client funds, and taking other action appropriate to the purpose of the trust. The trustee has little if any duty to protect the interests of the disabled, suspended, or deceased attorney, or the deceased attorney's estate, and should not attempt to keep the attorney's business viable during the suspension period or preserve the value of the practice for the estate or for sale. If a legal representative of the deceased, suspended, or disabled attorney appears and

seeks to preserve the value of the practice for sale, the trustee should cooperate to the extent possible. A sale of the practice could produce sufficient return to help pay the fees and costs of the trusteeship.

Death and Disability Practice *After* Iowa Court Rule 39.18

Terminology

Iowa Court Rule 39.18 and the forms prepared by Iowa Trust & Estate Counsel (ITEC) use the terms *designated attorney* and *planning attorney*. To reduce confusion, the same terms are used in this outline. The term *Designated Attorney* refers to the lawyer designated under the provisions of rule 39.18 to administer the practice of a deceased or disabled attorney. The term *Planning Attorney* refers to the attorney making the designation, whose practice is to be administered.

The New Framework of Rule 39.18

Iowa Court Rule 39.18 will be effective December 25, 2017, for the 2018 annual report filing season. Rule 39.18 creates two “tiers” of planning. The “first tier” is mandatory, and the “second tier” is optional.

The “first tier” is a mandatory short form designation and authorization as part of the annual questionnaire filed with the Client Security Commission. The designation must identify an active Iowa attorney, law firm with at least one active Iowa attorney, or qualified attorney-servicing association. The designation also must identify where the planning attorney's records are located, including a current client list, and authorize the designated attorney or entity to perform certain tasks necessary to protect the interests of the planning attorney's clients. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect client interests, and administering the planning attorney's trust account.

All attorneys in private practice are required to complete the “first tier” short form designation as part of the annual client security questionnaire. If a planning attorney is a member of a law firm that includes other Iowa attorneys in good standing, the planning attorney may simply designate his or her own firm.

Attorneys who are not in private practice in Iowa may indicate that status on the annual questionnaire and will not be required to complete the portion of the questionnaire pertaining to succession planning.

Because the “first tier” designations will be part of the annual client security questionnaire, chapter 39 of the court rules creates a duty to update the designation information within 30 days after the designation information occurs. The Office of Professional Regulation will add a succession plan update module on the lawyer account page to allowing updates between annual reporting periods.

The “second tier” of succession planning is an optional but encouraged written plan that the planning attorney may create if desired. In the optional written plan, the planning attorney may provide further guidance and authority to perform law firm management and administrative tasks. Those tasks may include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.

Rule 39.18 requires all attorneys in private practice to maintain a current client list. The Iowa State Bar Association Committee on Ethics and Practice Guidelines is developing a standard for content of a current client list.

The rule authorizes the designated attorney or entity to apply to the judicial district chief judge for an order confirming the death or disability of the planning attorney.

A qualified attorney-servicing association is defined as a bar association all or part of whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Division of Banking.

The amendments authorize the designated attorney or entity to petition for appointment of a trustee under the provisions of rule 34.17 or 34.18, as applicable, if the designated attorney or entity believes it is beneficial to be court-appointed as a trustee, or believes it is appropriate for the court to appoint an independent trustee. If the designated attorney or entity applies for a trustee appointment under rule 34.17 or 34.18, the amendments require the judicial district chief judge to give due regard to any designation or standby nomination the planning attorney made under the provisions of rule 39.18.

Implementing the Mandatory “First Tier” Provisions

An initial task is selection of another Iowa attorney in good standing, Iowa law firm with at least one active Iowa attorney in good standing, or a qualified attorney-servicing association to serve as designated attorney or entity. This selection should be made with care, as the designated attorney or entity will be

responsible for the transition of clients and the office, and probably also for proper disbursement of client funds in the trust account.

The planning attorney should familiarize the designated attorney or entity with the planning attorney's office procedures and system. The planning attorney should consider providing the designated attorney or entity a tour of the office, with introductions to staff, and familiarization with how to access the client list, files, and other paper and electronic records.

The planning attorney also should brief the law office staff and his or her family regarding the existence and purpose of the designation, and how they should assist the designated attorney or entity with access to the client list, files, and other paper and electronic records.

Besides identifying the designated attorney as part of the mandatory "first tier" requirements, the planning attorney is required to specify the "custodian" and location of the client list, electronic and paper files and records, and the passwords and other security protocols required to access electronic files and records. The term "custodian" in this context is not intended to require that some person other than the planning attorney actually have physical possession of these materials. The intent is that some person other than the planning attorney should be knowledgeable regarding the location of these materials and have the ability to help the designated attorney gain access to them.

Examples: The "custodian" for this purpose might be a law staff member or a family member who knows where the materials are located and has a key to the office. If the planning attorney has briefed the designated attorney on the location of these materials and provided the designated attorney with a key to the office, the designated attorney could be the "custodian." If the planning attorney has briefed the designated attorney on the location of the materials but no person other than the planning attorney has a key to the office, the "custodian" might be the office landlord who has a key to the office.

Once the planning attorney has submitted an annual client security questionnaire in compliance with rule 39.18, he or she should print out a designation form from his or her lawyer account page, execute it before a notary, and provide the executed form to the designated attorney. The designated attorney will need the executed designation form to establish his or her authority to administer the practice, and in particular to administer the trust account.

Implementing the Optional Second Tier Provisions

The "second tier" provisions of rule 39.18 can only be implemented by a written agreement and power of attorney regarding the scope of the duties to be

performed by the designated attorney and the planning attorney's authorization and consent to their performance. Iowa Trust & Estates Counsel (ITEC) has prepared forms to implement the "second tier" provisions, which are included at Appendix C. The ITEC forms are as follows:

Law Practice Succession Plan Agreement: This agreement is intended to supplement the designations made in the annual client security questionnaire. The agreement addresses authority to administer numerous functions not authorized under the "first tier" designation, including law firm financial affairs, insurance, law firm staffing, termination of leases and other obligations, and sale or closure of the practice.

Durable Limited Power of Attorney for Management of Law Practice Upon Incapacity or Inability to Practice Law for Any Reason: This power of attorney form contains durability provisions and incorporates by reference the power and authority described in the Law Practice Succession Plan Agreement.

Providing for Designated Attorney (and Alternate) in Estate Planning Documents: ITEC has provided sample provisions for the planning attorney's will or revocable trust, directing the fiduciary for the estate or trust to engage the designated attorney to close or sell the practice in accordance with the succession plan agreement.

Law Practice Business Entities: Appointment of Agent to Manage Law Practice Upon Death or Incapacity: Forms are provided for entity consent and authorization of the designated attorney as an agent of the professional corporation or professional limited liability company.

Tip: The ITEC forms describe the status of the designated attorney or alternate as an agent of the planning attorney. If the designated attorney acts solely as an agent, he or she could provide clients notice of errors, just as the planning attorney would have done had he or she been able. Acting solely as an agent, the potential for conflicts likely is reduced, such that the designated attorney can more easily assume duties as successor counsel for the clients. In contrast, if the designated attorney acts as the attorney for the planning attorney, his or her primary duty would be to the planning attorney. The designated attorney would not be able to inform clients of errors discovered in the work performed by the planning attorney, unless the planning attorney expressly consents to and directs such disclosures. The designated attorney's duties as counsel could increase the probability that conflicts of interest would prevent the designated attorney from assuming duties as successor counsel for the clients.

Client Notification

Once a designation has been made under rule 39.18, the planning attorney should provide notice to clients regarding the designation. The easiest way to do this is to include the information regarding the designation in your retainer agreements, engagement letters, and firm brochure. This provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement should provide written authorization for the designated attorney to proceed on the client's behalf, if necessary.

Handling Client Files

One of the most troublesome issues confronted incident to death or permanent disability of a practicing attorney is the disposition of client files. Often the files never have been reviewed for client property or periodically purged by the disabled or deceased attorney. Proper handling of these files generally is a matter of considerable time and expense for the fiduciary or trustee, and will consume substantial time and expense on the part of the designated attorney absent preparation by the planning attorney.

The Iowa Supreme Court has adopted the "entire file" approach to the question of who owns the contents of a client's file. *Iowa Supreme Court Attorney Disciplinary Bd. v. Gottschalk*, 729 N.W.2d 812 (Iowa 2007); Restatement (Third) of the Law Governing Lawyers §46(2) (2000). Subject to narrow exceptions, the client owns the entire file, including attorney work product. *Gottschalk*, 729 N.W.2d at 819-820.

Unless the planning attorney has addressed disposition of client files in his or her engagement letters, fee contracts, or termination letters, it will not be permissible for the designated attorney to summarily destroy client files. Before any file is destroyed, it will need to be checked for original documents (wills, abstracts, conveyance instruments) and any other specific client property that must be removed from file and returned to the rightful owners. The designated attorney then will need to contact the clients and return all files to the clients involved. If a client refuses to take custody of the file or otherwise fails to respond after being contacted and advised of the impending destruction of the file, the designated attorney would be authorized to destroy the remaining contents of the file if the normal file retention period has passed.

With respect to those files for which a client address cannot be found, the normal procedure ordered in trustee cases has been to publish notice regarding the files, and then retain those files that are unclaimed for a period of five or six years during which these clients may come forward and claim their file.

Planning attorneys can minimize the burden of file disposition upon termination of their practice by adopting some procedures in their daily practice:

Planning attorneys should consider including an agreement and consent regarding file destruction in their initial engagement letter or fee agreement with each client, or in the arrangements made upon termination of each representation.

Planning attorneys should periodically examine all files for which the last action was completed more than six years ago (or more than whatever minimum retention period is prescribed by your professional liability carrier); remove documents or other client property for transfer to the client; and consider destruction of the paper file provided client consent exists.

Planning attorneys should use a secure method to destroy client files, such as shredding, and document for future reference when and how each file was destroyed.

As a general rule, the best practice is to retain a client's file for a minimum period of six years after the last action taken on the file, as prescribed for trust account records and supporting documents under Iowa Court Rule 45.2(2). The planning attorney's professional liability carrier may recommend a longer minimum retention period. It is permissible to retain files in electronic form only and dispose of the paper files.

Preparation of Planning Attorney Personal Affairs

Planning attorneys will want to maintain a current will, designating a personal representative and alternates, so that probate of their estate can be opened and a personal representative can be appointed quickly upon their death.

Iowa law gives broad powers to a personal representative to sell or wind down a business, and to hire professionals to help administer the estate. Iowa Code §§ 633.84, 633.350. However, for the personal representative's protection, you may want to include language in your will that expressly authorizes the personal representative, along with such professionals as the personal representative may engage, to administer the practice in an effort to preserve its value pending disposition and assist with orderly transition of client matters. The planning attorney should consider instructing the personal representative to engage the designated attorney for that purpose, with the appointment order or engagement incorporating provisions of the backup agreement. The form provisions prepared by ITEC use this approach.

The planning attorney should consider the likely cash flow situation of the practice upon disability or death. If the remainder of the planning attorney's

property (other than the practice) is likely to pass by operation of law to a spouse or other family members, the practice might be placed in a cash-poor situation, especially if the accounts receivable are not amenable to rapid billing. Cash flow needs of the practice for routine expenses and compensation of staff may continue for some period after the planning attorney's death or disability. The planning attorney may want to consider practice interruption insurance, disability insurance, and insurance on his or her life as sources for interim capital to wind up the practice in the event of disability or death.

Succession Planning By a Member of a Firm

The law firm organizational document is an appropriate place to include provisions relating to the death or disability of attorney members and employees of the firm.

One possible topic for the firm organizational document is a list of duties of all attorney members of the firm during routine practice, with the goal of maintaining a well-organized practice that is amenable to transition. The list of duties might include many of the topics addressed in Appendix D, "Preparing a Law Practice for Death, Disability or Incapacity."

Other possible topics for the firm organizational document are law firm authority and duties after the death or disability of an attorney member of the firm.

The firm also may want to consider formalizing designated attorney or practice group arrangements, wherein attorneys working in similar areas will maintain some level of familiarity with the matters assigned to another attorney or attorneys in the group.

Office of Professional Regulation (OPR) Implementation of Rule 39.18

During the period April through November of 2017, the staff at OPR will be working with a web site developer to implement necessary changes to the annual client security questionnaire and other functions on the OPR / Supreme Court Commissions web site.

The changes will allow attorneys in active status to submit succession planning designations as part of the annual client security report and questionnaire, and update succession planning designations at any time. A new heading titled "Succession Planning Functions" will be added to the menu on the lawyer account page. Under the heading "Succession Planning Functions" there will be two buttons, one titled "Update Designations" and the other titled "View / Print Designation of Authority." The "Update Designations" button will take an attorney through a set of screens that pose the same succession planning questions posed on the normal client security questionnaire. The "View / Print

Designation of Authority” button will generate an official report that incorporates the succession planning designations and authorizes the designated attorney or entity to carry out the duties described in rule 39.18 in the event of the planning attorney’s death or disability. This report will be viewable and printable by the planning attorney at any time from his or her lawyer account page. The intent is that the planning attorney will print out the report, execute it, and provide a copy to the designated attorney.

The changes will allow staff at OPR to view an attorney’s succession planning designations. In addition, the staff at OPR will be able to print out the official form showing the current designations, which the OPR director or assistant directors may execute and give to the designated attorney or entity in the event the planning attorney did not do so prior to his or her death or disability. This form would authorize the actions described by the rule.

Appendix A – Relevant Rules

Appendix B – Report of the Iowa State Bar Association Committee

Appendix C - Succession Planning Documents Prepared by Iowa Trust & Estate Counsel

Appendix D – Checklist – Preparing a Law Practice for Death, Disability, or Incapacity

Appendix E - Checklist for Actions by the Attorney Designated under the “First Tier”

In the Iowa Supreme Court

**In the Matter of Adopting
Amendments to Iowa Court
Rules Regarding Death and
Disability Planning by Iowa
Attorneys**)
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Order

CLERK SUPREME COURT

The supreme court adopts amendments to Iowa Court Rule 39.18, which requires all active practitioners in Iowa to have a written succession plan, in the event of death or disability, for their law practices. The court also adopts conforming amendments to rules 34.17(6) and 34.18(1).

The court originally adopted rule 39.18 on November 20, 2015. The court then held the implementation date in abeyance to allow The Iowa State Bar Association’s Rule 39.18 Study Committee (ISBA committee) to study further the effects and consequences of the rule. The ISBA committee subsequently issued a report of recommended amendments to the rule.

On August 29, 2016, the supreme court submitted for public comment the ISBA committee report, a letter opposing the ISBA committee report, and the proposed rule amendments on succession planning. The court appreciates the comments it received. After consideration of the public comments and further consideration of the succession rule, the court finds that the proposed amendments to rule 39.18 are helpful to both members of the bar and to the court’s administration of the practice of law. The court’s office of professional regulation has advised the court that it will provide guidance for attorneys regarding implementation of and compliance with new rule 39.18.

The key provisions of rule 39.18, which will take effect for the 2018 annual report filing season, include the following:

- Two “tiers” of succession planning are created. The first tier is a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security

Commission. The designation would identify the assisting attorney, law firm (which could be the planning attorney's own firm, if the planning attorney is a member of a firm), or qualified attorney-servicing association. The designation also would identify where the planning attorney's records are located, including a current client list, and would authorize the assisting attorney or entity to perform tasks necessary to protect the interests of the planning attorney's clients. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect the clients' interests, and administering the planning attorney's trust account.

- The second tier of succession planning consists of an optional but encouraged written plan that the planning attorney creates. In the optional written plan, the planning attorney would provide further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.
- All attorneys in private practice are required to complete the first tier, mandatory short form designation as part of the annual client security questionnaire. If a planning attorney is a member of a law firm that includes other Iowa attorneys in good standing, the planning attorney may designate his or her own firm as the assisting law firm.
- Attorneys who are not in private practice in Iowa may indicate that professional status on the annual questionnaire and are not required to complete the remaining portion of the questionnaire pertaining to succession planning.
- The rule requires all attorneys in private practice to maintain a current client list.
- The rule authorizes the planning attorney's assisting attorney or entity to apply to the judicial district chief judge for an order confirming the death or disability of the planning attorney.
- A qualified attorney-servicing association is defined as a bar association all or part of whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Division of Banking.
- The amendments authorize the assisting attorney or entity to petition for appointment of a trustee under the provisions of rule 34.17 or 34.18, as applicable, if the assisting attorney or entity

believes it is beneficial to be court appointed as a trustee, or believes it is appropriate for the court to appoint an independent trustee. If the assisting attorney or entity applies for a trustee appointment under rule 34.17 or 34.18, the amendments require the judicial district chief judge to give due regard to any designation or standby nomination the planning attorney made under the provisions of rule 39.18.

- The Iowa Supreme Court Office of Professional Regulation will implement the new mandatory portion of the annual client security report in the 2018 reporting season.
- The court also adopts amendments conforming rules 34.17(6) (disability suspension) and rule 34.18(1) (death, suspension, or disbarment of practicing attorney) to amended rule 39.18.

The court adopts amendments to rules 34.17(6), 34.18(1), and 39.18 of the Iowa Court Rules as provided with this order.

The amendments will be effective December 25, 2017, and will apply to the entirety of the 2018 attorney annual report filing season.

Dated this 18th day of November, 2016.

The Iowa Supreme Court

By Mark S. Cady
Mark S. Cady, Chief Justice

Chapter 34

Administrative and General Provisions

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General Disciplinary Rules of Grievance Commission and Disciplinary Board

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34.17 Disability suspension.

34.17(1) In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

34.17(2) Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing

of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(4) Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public

that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.17(5) No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

34.17(6)

a. Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or standby nomination made under the provisions of rule 39.18. Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

b. While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

c. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees

and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

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Rule 34.18 Death, suspension, or disbarment of practicing attorney.

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a standby basis as described in Iowa Court Rule 39.18, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or standby nomination made under the provisions of rule

39.18. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

34.18(2) While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

34.18(3) The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

34.18(4) When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

34.18(5) Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

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Chapter 39
Client Security Commission

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Rule 39.18 Requirement for death or disability designation and authorization.

39.18(1) Required designation and authorization in annual questionnaire.

a. Each attorney in private practice must identify and authorize each year, as part of the annual questionnaire required by rule 39.11, a qualified attorney-servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives under this rule. An attorney may identify and authorize an Iowa law firm of which the attorney is a member to serve under this rule.

b. The attorney or entity designated under this rule is authorized to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients.

c. The attorney or entity designated under this rule also is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which

the designating attorney practiced for an order confirming the death or disability of the designating attorney.

39.18(2) *Client list and location of key information.* Each attorney in private practice must maintain a current list of active clients, in a location accessible by the attorney or entity designated under this rule. As part of the annual questionnaire required by rule 39.11, each attorney in private practice must identify the custodian and the location of the client list, the custodian and location of electronic and paper files and records, and the custodian and location of passwords and other security protocols required to access the electronic files and records. The attorney or entity designated under this rule is authorized to access electronic and paper files and records as necessary to perform duties as a designated attorney, and is authorized to access passwords and other security protocols required to access those electronic files and records.

39.18(3) *Supplemental plan.* An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of rule 34.17 or 34.18.

39.18(4) *Durability.* A designation or plan under this rule must include language sufficient to make the designated attorney's or entity's powers durable in the event of the private practitioner's disability. See Iowa Code § 633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) Conflicts of interest. A designated attorney or entity must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney or entity must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(6) Availability of trustee provisions. A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of rule 34.17 or 34.18, as applicable.

39.18(7) Definitions. For purposes of this rule, the following definitions apply:

a. A "qualified attorney-servicing association" is a bar association, all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell attorneys professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Division of Banking.

b. A "law firm" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

c. An "attorney in private practice" includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.

See rule 32:1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Iowa Rules of Professional Conduct and other law. See, e.g., rules 32:1.1, 32:1.8, and 32:5.6.

Criminal, Fraudulent, and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See rule 32:1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. See rule 32:4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See rule 32:1.4(a)(5).

[Court Order April 20, 2005, effective July 1, 2005; March 12, 2007]

Rule 32:1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 32:1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. See Iowa Ct. R. ch. 33.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in rule 32:1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* rule 32:1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client or other applicable law. *See* rule 32:1.2. *See, e.g.,* Iowa R. Crim. P. 2.29(6); Iowa Rs. App. P. 6.102(1)(b) and 6.201, 6.109(4) and 6.109(5).

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *See* Iowa Ct. R. 35.17(6) and 35.18 (where reasonable necessity exists, the local chief judge shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

[Court Order April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 32:1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 32:1.0(e), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* rule 32:1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. The lawyer should also discuss relevant provisions of the Standards for Professional Conduct and indicate the lawyer's intent to follow those Standards

whenever possible. *See* Iowa Ct. R. ch. 33. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client’s behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer’s staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in rule 32:1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* rule 32:1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* rule 32:1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer’s own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 32:3.4(c) directs compliance with such rules or orders.

[Court Order April 20, 2005, effective July 1, 2005; October 15, 2015]

Rule 32:1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses, or violate any restrictions imposed by law. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment

will preclude other employment by the lawyer;

- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

and

- (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Comment

Reasonableness and Legality of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer. A fee that is otherwise reasonable may be subject to legal limitations, of which the lawyer should be aware. For example, a lawyer must comply with restrictions imposed by statute or court rule on the timing and amount of fees in probate.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of

For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibitions set forth in paragraphs (j) and (l) are personal and are not applied to associated lawyers.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person, and

(2) about whom the lawyer had acquired information protected by rules 32:1.6 and 32:1.9(c) that is material to the matter, unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this rule. Under this rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. *See* comment [9]. Current and former government lawyers must comply with this rule to the extent required by rule 32:1.11.

[2] The scope of a "matter" for purposes of this rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a

by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Such a fund has been established in Iowa, and lawyer participation is mandatory to the extent required by chapter 39 of the Iowa Court Rules.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Iowa Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* rules 32:1.2(c) and 32:6.5. *See also* rule 32:1.3, comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Iowa Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also* rule 32:6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage

in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under rules 32:1.6 and 32:3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in rule 32:1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if the withdrawal can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee to the extent permitted by Iowa Code section 602.10116 or other law. *See* rule 32:1.15.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the

extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. *See* rules 32:5.4 and 32:5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] This rule contemplates that a lawyer who sells an entire practice may continue in the practice of law in Iowa provided that the lawyer practices in another geographic area of the state.

[5] This rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by rule 32:1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a geographical area typically would sell the entire practice, this rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent, and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of rule 32:1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. *See* rule 32:1.6(b)(7). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The rule provides that before such information can be disclosed by the seller to the purchaser the client must be given

actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (*see* rule 32:1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (*see* rule 32:1.7 regarding conflicts and rule 32:1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (*see* rules 32:1.6 and 32:1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. *See* rule 32:1.16.

Applicability of the Rule

[13] This rule applies to the sale of a law practice of a deceased, disabled, or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these rules. Since, however, no lawyer may participate in a sale of a law practice that does not conform to the requirements of this rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

[15] This rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[Court Order April 20, 2005, effective July 1, 2005; October 15, 2015]

Rule 32:1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as rule 32:1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to

contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.15(3) For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as provided above upon the attorney's application and a hearing in accordance with rule 34.25, but reinstatement does not terminate a pending disciplinary proceeding or bar later proceedings against the attorney.

34.15(4) An attorney temporarily suspended under the provisions of this rule must be promptly reinstated upon the filing of sufficient evidence disclosing that the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement does not terminate a pending disciplinary proceeding or bar later proceedings against the attorney.

34.15(5) The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to or been convicted of a crime as set forth above must, within 10 days, transmit a certified record of the proceedings to the supreme court clerk.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 34.15 formerly appeared as Iowa Court Rule 35.15. [Court Order January 26, 2016, effective April 1, 2016]

Rule 34.16 Suspension or disbarment on consent.

34.16(1) An attorney subject to investigation or to a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to suspension or disbarment, but only by delivering to the grievance commission an affidavit stating that the attorney consents to suspension of not more than a specific duration or to disbarment and indicating the following:

a. The consent is freely and voluntarily given without any coercion or duress and with full recognition of all implications of the consent.

b. The attorney is aware of a pending investigation or proceeding involving allegations that there exist grounds for discipline, the nature of which will be specifically set forth.

c. The attorney acknowledges the material facts of the alleged misconduct are true.

d. In the event proceedings were instituted upon the matters under investigation, or if existing proceedings were pursued, the attorney could not successfully defend against the proceedings.

e. The facts admitted in the affidavit would likely result in the suspension or revocation of the attorney's license to practice law.

f. Any matters in mitigation or aggravation of the alleged misconduct.

g. Consent to any alternative or additional sanctions as provided in rule 36.19.

34.16(2) The disciplinary board must file a response to the affidavit, indicating whether the board believes the misconduct admitted in the affidavit would probably result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

34.16(3) Upon receipt of the affidavit and response, the grievance commission must file the affidavit and response with the supreme court clerk. The supreme court may enter an order suspending the attorney's license to practice law for a period no greater than the stipulated duration or disbarring the attorney on consent, unless the court determines the misconduct admitted in the affidavit is insufficient to support the discipline to which the attorney has consented. The supreme court may also order any of the alternative or additional sanctions to which the respondent has consented. If the supreme court determines the affidavit does not set forth facts that support imposition of the discipline to which the attorney has consented, it may either enter an order allowing the parties to supplement the affidavit or an order declining to accept the affidavit. An order declining to accept the affidavit does not bar further disciplinary proceedings against the attorney, and does not preclude the supreme court from imposing any sanction the attorney's conduct warrants upon review of a grievance commission determination.

34.16(4) Any order suspending or disbarring an attorney on consent is a matter of public record. If the supreme court enters an order of suspension or disbarment, the affidavit and response will be publicly disclosed.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 34.16 formerly appeared as Iowa Court Rule 35.16. [Court Order January 26, 2016, effective April 1, 2016]

Rule 34.17 Disability suspension.

34.17(1) In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or

hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

34.17(2) Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(4) Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.17(5) No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

34.17(6)

a. Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or standby nomination made under the provisions of rule 39.18. Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

b. While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

c. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

34.17(7) Any suspended attorney is entitled to apply for reinstatement to active status once each year or at such shorter intervals as the supreme court may provide. The supreme court may reinstate an attorney suspended due to disability upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fully qualified to resume the practice of law. Upon the attorney's filing of an application for reinstatement, the supreme court may take or direct any action deemed necessary or proper to determine whether the suspended attorney's disability has been removed, including an examination of the attorney by qualified medical experts as the supreme court may designate. In its discretion the supreme court may direct that the attorney pay the expenses of the examination.

34.17(8) The filing of an application for reinstatement to active status by an attorney suspended due to disability constitutes a waiver of the doctor-patient privilege regarding any treatment of the attorney during the period of the disability. The attorney must also set forth in the application for reinstatement the name of every psychiatrist, psychologist, physician, hospital, or any other institution by whom or in which the attorney has been examined or treated since the disability suspension. The attorney must also furnish to the supreme court written consent that the psychiatrist, psychologist, physician, hospital, or other institution may divulge any information and records the supreme court or any court-appointed medical experts request.

34.17(9) When an attorney has been suspended due to disability and thereafter the attorney is judicially held to be competent or cured, the supreme court may dispense with further evidence regarding removal of the disability and may order reinstatement to active status upon such terms as the court deems reasonable.

[Court Order January 26, 2016, effective April 1, 2016; November 18, 2016, effective December 25, 2017]

COMMENT: Rule 34.17 formerly appeared as Iowa Court Rule 35.17. It is amended to provide for recovery of trustee fees and costs the Client Security Commission pays through the annual assessment and reporting process and also as a condition of reinstatement. [Court Order January 26, 2016, effective April 1, 2016]

Rule 34.18 Death, suspension, or disbarment of practicing attorney.

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a standby basis as described in Iowa Court Rule 39.18, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or standby nomination made under the provisions of rule 39.18. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

34.18(2) While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

34.18(3) The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

34.18(4) When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

34.18(5) Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

[Court Order January 26, 2016, effective April 1, 2016; November 18, 2016, effective December 25, 2017]

COMMENT: Rule 34.18 formerly appeared as Iowa Court Rule 35.18. It is amended to provide for recovery of trustee fees and costs the Client Security Commission pays through the annual assessment and reporting process and also as a condition of reinstatement. [Court Order January 26, 2016, effective April 1, 2016]

Rule 34.19 Reciprocal discipline.

34.19(1) Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, must promptly advise the disciplinary board in writing of such action. Upon being informed that an attorney admitted to practice in this state has been the subject of professional discipline in another jurisdiction or any federal court, the disciplinary board must obtain a certified copy of such disciplinary order and file it in the office of the supreme court clerk.

34.19(2) Upon receipt of a certified copy of an order disclosing that an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, the supreme court will promptly give notice of the discipline by restricted certified mail or personal service directed to the attorney containing: a copy of the disciplinary order from the other jurisdiction or federal court and an order directing that the disciplined attorney file in the supreme court, within 30 days after receipt of the notice, any objection that imposition of identical discipline in this state would be too severe or otherwise unwarranted, giving specific reasons. A like notice will be sent, by ordinary mail, to the disciplinary board, which has the right to object on the ground that the imposition of identical discipline in this state would be too lenient or otherwise unwarranted. If either party objects to imposition of identical discipline, the matter will be set for hearing before three or more justices of the supreme court, and the parties will be notified by restricted certified mail at least 10 days prior to the date set. At the hearing, a certified copy of the testimony, transcripts, exhibits, affidavits, and other matters introduced into evidence in the other jurisdiction or federal court must be admitted into evidence as well as any findings of fact, conclusions of law, decisions, and orders. Any such findings of fact are conclusive and not subject to readjudication. The supreme court may enter such findings, conclusions, and orders that it deems appropriate.

34.19(3) If neither party objects within 30 days from service of the notice, the supreme court may impose the identical discipline, unless the court finds that on the face of the record upon which the discipline is based it clearly appears that any of the following are true:

a. The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.

b. There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that the supreme court could not, conscientiously, accept as final the conclusion on that subject.

c. The misconduct established warrants substantially different discipline in this state.

34.19(4) If the supreme court determines that any such factors exist, it may enter an appropriate order. Rule 34.25 applies to any subsequent reinstatement or reduction or stay of discipline.

[Court Order January 26, 2016, effective April 1, 2016]

COMMENT: Rule 34.19 formerly appeared as Iowa Court Rule 35.19. [Court Order January 26, 2016, effective April 1, 2016]

Rule 34.20 Suspension of attorney's license for failure to comply with a child support order. An attorney who fails to comply with a child support order may be subject to a suspension of the attorney's license to practice law in Iowa.

34.20(1) Procedure. Any certificate of noncompliance with a child support order that involves an attorney must be filed by the Child Support Recovery Unit (CSRU) with the office of professional regulation at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court must issue a notice to the attorney. The following rules apply and must be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CSRU to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county in which the underlying child support order is filed.

office of professional regulation, all fees, penalties, court costs, and client security trust fund claim reimbursements assessed on the annual statement.

39.17(3) Assessments are due on or before March 10 of each year.

39.17(4) The director of the office of professional regulation must pay to the state general fund all fees, penalties, and court costs due the state general fund and collected under this provision.

[Court Order November 20, 2015, effective January 1, 2016]

Rule 39.18 Requirement for death or disability designation and authorization.

39.18(1) *Required designation and authorization in annual questionnaire.*

a. Each attorney in private practice must identify and authorize each year, as part of the annual questionnaire required by rule 39.11, a qualified attorney-servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives under this rule. An attorney may identify and authorize an Iowa law firm of which the attorney is a member to serve under this rule.

b. The attorney or entity designated under this rule is authorized to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients.

c. The attorney or entity designated under this rule also is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which the designating attorney practiced for an order confirming the death or disability of the designating attorney.

39.18(2) *Client list and location of key information.* Each attorney in private practice must maintain a current list of active clients, in a location accessible by the attorney or entity designated under this rule. As part of the annual questionnaire required by rule 39.11, each attorney in private practice must identify the custodian and the location of the client list, the custodian and location of electronic and paper files and records, and the custodian and location of passwords and other security protocols required to access the electronic files and records. The attorney or entity designated under this rule is authorized to access electronic and paper files and records as necessary to perform duties as a designated attorney, and is authorized to access passwords and other security protocols required to access those electronic files and records.

39.18(3) *Supplemental plan.* An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of rule 34.17 or 34.18.

39.18(4) *Durability.* A designation or plan under this rule must include language sufficient to make the designated attorney's or entity's powers durable in the event of the private practitioner's disability. *See* Iowa Code §633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) *Conflicts of interest.* A designated attorney or entity must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney or entity must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(6) *Availability of trustee provisions.* A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of rule 34.17 or 34.18, as applicable.

39.18(7) *Definitions.* For purposes of this rule, the following definitions apply:

a. A "qualified attorney-servicing association" is a bar association, all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell attorneys professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Division of Banking.

b. A "law firm" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

c. An “*attorney in private practice*” includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.

[Court Order November 20, 2015, effective January 1, 2016; November 24, 2015, effective March 1, 2016; January 15, 2016, effective January 1, 2017; August 29, 2016, effective January 1, 2018; November 18, 2016, effective December 25, 2017]

45.8(2) *Deposit.* Because a general retainer is earned by the lawyer when paid, the retainer should not be deposited in the trust account.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.9 Special retainer.

45.9(1) *Definition.* A special retainer is a fee that is charged for the performance of contemplated services rather than for the lawyer's availability. Such a fee is paid in advance of performance of those services.

45.9(2) *Prohibition.* A lawyer may not charge a nonrefundable special retainer or withdraw unearned fees.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.10 Flat fee.

45.10(1) *Definition.* A flat fee is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

45.10(2) *When deposit required.* If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account.

45.10(3) *Withdrawal of flat fee.* A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client's right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.11 Designation of successor signatories. A lawyer who is the sole lawyer signatory on an attorney trust account may designate, in an instrument acceptable to the depository for the trust account, a successor signatory, who shall be a member of the bar in good standing and admitted to the practice of law in Iowa, and whose authority shall become effective upon the occurrence of an event or events described in the instrument. The event or events described in the instrument may include death, disappearance, abandonment of law practice, temporary or permanent incapacity, suspension, or disbarment.

[Court Order December 10, 2012]

Report of the Rule 39.18 Study Committee

July 2016

On November 20, 2015 the Iowa Supreme Court adopted Court Rule 39.18 requiring sole practitioners to have a written plan of succession for their practice effective January 1, 2016. The rule was adopted after receiving just one comment during the 30 day public comment period. After adoption, it quickly became apparent to the Iowa State Bar Association and the Court that more time was needed to study the impact of the rule on Iowa lawyers and the rule effective date was eventually delayed to January 1, 2017. In response to questions raised by the bar concerning the rule, then President Bruce Walker formed and the Board of Governors approved the appointment of the Rule 39.18 Study Committee to be chaired by Past President Joe Feller from Sibley.

The additional members of the committee were Past Presidents David Beckman, Burlington, Nick Critelli Jr., Des Moines and Joe Holland, Iowa City, along with John (Rick) Bierman III, Grinnell, Phil Brooks, Cedar Rapids, Frank Hoyt Jr., West Des Moines, Kate Kohorst, Harlan, Michel Nelson, Carroll, Deb Petersen, Council Bluffs, Office of Professional Regulation Director Paul Wieck II and ISBA Executive Director Dwight Dinkla (ex-officio).

President Walker charged the committee to research the implementation of the rule and how it was to be interpreted. As initially adopted Rule 39.18 applied to many more lawyers than just the traditional sole practitioners and bar leadership was concerned that application of the rule would create liabilities for the assisting attorneys as well as financial costs to the estate of the deceased or disabled attorney.

The Committee met in person on four occasions, March 16, 2016, April 27, 2016, May 18, 2016 and June 13, 2016. On July 22, 2016, the Committee met by phone conference, approved this report and concluded its work.

The Committee concluded that the present Rule 39.18 requiring sole practitioners to prepare mandatory succession plans should be vacated and replaced with a rule described below that would not require a written succession plan, make compliance easier and apply to all private practice attorneys, while at the same time protecting the interests of our clients and the public.

All the members of the Committee agree that succession planning is very important both for our clients and our families and that the Court and the bar should encourage all lawyers to complete written succession plans and also take steps to improve their office practice management procedures so that their offices are ready for succession in the event of death or disability. At each meeting of the Committee the members engaged in very dynamic discussions regarding many different issues related to the implementation of Rule 39.18 as currently adopted.

The Committee reviewed the background for the current rule, numbers of attorneys affected by the rule, immunity/liability for the designated attorneys, role of professional liability insurance, compensation for designated attorneys, definitions for "disability", fiduciary duties of designated attorneys and conflicts of interest, and dealing with electronic and traditional client files, along with other issues. Many of the Committee members had personal experience helping to close the law office for a deceased attorney and their perspectives were very helpful. Succession planning necessarily encompasses many more issues than this Committee was formed to review and while a discussion of those issues was necessary to properly evaluate Rule 39.18, a full examination and proposed resolutions to deal with those issues is beyond the work of this Committee.

Eventually the Committee narrowed its focus to a review of Rule 39.18 and while recognizing the need for succession planning, struggled with the requirement that only sole practitioners were required to have written succession plans rather than all private practitioners. However, the Committee did not believe that the requirements of the current Rule 39.18 should be extended to all private practitioners either. In the end the Committee resolved the matter with its current recommendations that would require all attorneys answer a few more questions in connection with the annual license renewal and promote written succession plans on a voluntary basis. The Committee concluded that we would recommend the Court revise the current Rule 39.18 to make compliance easier for attorneys and also provide a method for the Office of Professional Regulation to gather the information the office needs in advance of an event where a law office is left unattended due to death or disability of the practitioner.

The revision of Iowa Court Rule 39.18 and associated rules proposed by the Committee would create two tiers of succession planning. The first tier would be a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security Commission. The authority of the assisting attorney or entity designated in the mandatory short form would be focused on tasks necessary to protect the interests of clients and complete trust account matters. The second tier would be a written plan created by the planning attorney that would be optional but encouraged. In the optional written plan, the planning attorney would be able to authorize additional tasks, mostly in law firm management and administration.

The Committee believes that adding a mandatory short form designation as part of the annual client security questionnaire would make it easier for Iowa attorneys to fulfill the basic planning requirement, place information regarding every private practitioner's plan in the possession of the Client Security Commission for quick retrieval, prompt annual updating by the attorney as part of the annual reporting process, and obviate the need for auditors of the Client Security Commission to check on succession planning during trust account audits. Iowa attorneys nonetheless would have the option of authoring their own, more expansive written plans to address matters not covered in the mandatory short form designation.

The concept recommended by the Committee would require all attorneys in private practice to complete a new portion of the annual client security questionnaire that identifies their assisting attorney, law firm (which can be their firm, if they are in a firm), or qualified lawyer servicing association, identifies where their records are located including their current client list, and authorizes the assisting attorney or entity to perform certain tasks in the event of the planning attorney's death or disability. Maintenance of a current client list would be required. The assisting attorney or entity would be authorized to apply to the district chief judge for an order confirming the death or disability. The listed tasks include reviewing client files, notifying clients of the planning attorney's death or disability, determining if other actions are necessary to protect the clients' interests, and administering the planning attorney's trust account. A qualified lawyer servicing association would be defined as a bar association all or part of whose members are admitted to practice in Iowa, a company authorized to sell professional liability insurance to Iowa attorneys, or an Iowa bank with trust powers issued by the Iowa Department of Banking.

Attorneys not in private practice in Iowa would be permitted to provide that response to a direct question on the annual questionnaire, and would not be required to complete the remainder of that portion of the questionnaire pertaining to succession planning.

Attorneys would still be permitted (and encouraged) to have their own written plan that provides further guidance and authority to perform law firm management and administrative tasks. Those tasks include collecting fees, paying law firm expenses and client costs, compensating staff, terminating leases, and selling the practice.

The assisting attorney or entity would be authorized to petition for appointment of a trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable, if the assisting attorney or entity believes it beneficial to be court appointed as a trustee, or believes it appropriate that an independent trustee be appointed. In any situation in which a trustee appointment under rules 34.17 or 34.18 is applied for, the new rules would require the chief judge to give due regard to any designation or stand by nomination made by a planning attorney under the provisions of Iowa Court Rule 39.18.

The Committee also recommends that the Office of Professional Regulation would not implement the new mandatory portion of the annual client security report until the 2018 reporting season.

The Committee further recommends that the ISBA continue to work with the Iowa Academy of Trust and Estate Counsel to provide updated law practice succession planning documents to our members. And finally the Committee recommends that the ISBA continue to provide continuing legal education to our members to assist them with their succession planning.

Copies of the original Rule 39.18 as well as the Committee's new proposed language for Rules 34.17, 34.18 and 39.18 are attached to this report.

ATTACHMENT A – (CURRENT RULE)

Rule 39.18 Requirement for death or disability plan.

39.18(1) Each sole practitioner must have a written plan that designates a primary and an alternate active Iowa attorney in good standing to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients. The primary and alternate attorneys must consent in writing to their designation in the plan.

39.18(2) The plan must authorize the designated attorneys to prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. The plan must identify the location of electronic files and records, authorize the designated attorneys to access electronic files and records as necessary to perform duties as a designated attorney, and provide the designated attorneys access to passwords and other security protocols required to access those electronic files and records.

39.18(3) The plan may authorize the designated attorneys to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks.

39.18(4) The plan must include language sufficient to make the designated attorneys' powers durable in the event of the sole practitioner's disability. *See* Iowa Code § 633B.1; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) The plan must be made available for review upon request by the director of the office of professional regulation or by any representative of the client security commission

39.18(6) The plan must be reviewed and updated annually.

39.18(7) A designated attorney must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(8) For purposes of this rule, a sole practitioner includes an attorney practicing alone, an attorney practicing only with other attorneys who do not own equity in the practice, an attorney practicing in an association of sole practitioners, or any other structure in which no other attorney owns equity in the practice.

[Court Order November 20, 2015, effective January 1, 2016; November 24, 2015, effective March 1, 2016; January 15, 2016, effective January 1, 2017]

ATTACHMENT B - (CURRENT RULE WITH PROPOSED REVISIONS)

34.17 Disability suspension.

34.17(1) In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

34.17(2) Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

34.17(4) Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

34.17(5) No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

34.17(6)

a. Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa Court Rule 39.18. Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

b. While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

c. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

Rule 34.18 Death, suspension, or disbarment of practicing attorney.

34.18(1) Upon a sworn application on behalf of a local bar association, an attorney or entity designated or nominated on a stand-by basis as described in Iowa Court Rule 39.18, or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. In appointing a trustee, the chief judge will give due regard to any designation or stand-by nomination made under the provisions of Iowa Court Rule 39.18. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

34.18(2) While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

34.18(3) The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

34.18(4) When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

34.18(5) Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

ATTACHMENT C - (PROPOSED REVISED RULE)

Rule 39.18 Requirement for death or disability designation and authorization.

39.18(1) Required designation and authorization in annual questionnaire.

a. Each attorney in private practice must identify and authorize each year, as part of the annual questionnaire required by Iowa Court Rule 39.11, a qualified lawyer servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives under this rule. An attorney may identify and authorize an Iowa law firm of which the attorney is a member to serve under this rule.

b. The attorney or entity designated under this rule is authorized to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients.

c. The attorney or entity designated under this rule also is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under Iowa Court Rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records.

d. The authority of the attorney or entity designated under this rule takes effect upon the death or disability of the designated attorney. The designated attorney or entity may apply to the chief judge of the judicial district in which the designating attorney practiced for an order confirming the death or disability of the designating attorney.

39.18(2) Client list and location of key information. Each attorney in private practice must maintain a current list of active clients, in a location accessible by the attorney or entity designated under this rule. As part of the annual questionnaire required by Iowa Court Rule 39.11, each attorney in private practice must identify the custodian and the location of the client list, the custodian and location of electronic and paper files and records, and the custodian and location of passwords and other security protocols required to access the electronic files and records. The attorney or entity designated under this rule is authorized to access electronic and paper files and records as necessary to perform duties as a designated attorney, and is authorized to access passwords and other security protocols required to access those electronic files and records.

39.18(3) Supplemental plan. An attorney in private practice may prepare a written plan that is supplemental to the designation and authority in the annual client security questionnaire. The supplemental written plan may designate an attorney or entity to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks. The supplemental written plan also may nominate an attorney or entity to serve as trustee if proceedings are commenced under the provisions of Iowa Court Rules 34.17 or 34.18.

39.18(4) Durability. A designation or plan under this rule must include language sufficient to make the designated attorneys' or entity's powers durable in the event of the private practitioner's disability. See Iowa Code § 633B.104; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

39.18(5) Conflicts of interest. A designated attorney or entity must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney or entity must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

39.18(6) Availability of Trustee Provisions. A designated attorney or entity may petition the court, at any time, for appointment as the trustee or appointment of an independent trustee under the provisions of Iowa Court Rules 34.17 or 34.18, as applicable.

39.18(7) Definitions. For purposes of this rule, the following definitions apply:

A "qualified lawyer servicing association" is a bar association all or part of whose members are admitted to practice law in the state of Iowa; a company authorized to sell lawyers professional liability insurance in Iowa; or an Iowa bank with trust powers issued by the Iowa Department of Banking.

A "law firm" is a minimum of two attorneys in a law partnership, professional corporation, or other association authorized to practice law.

An "attorney in private practice" includes an active Iowa attorney who resides outside Iowa but engages in the private practice of law in Iowa.

ATTACHMENT D – (PROPOSED CHANGES TO QUESTIONNAIRE)

Death or Disability Planning Addendum to Annual Client Security Questionnaire

Questions 25 through 30 implement the requirement in Iowa Court Rule 39.18 that each attorney in private practice designate annually an attorney or entity to perform certain duties in the event of the designating attorney's death or disability. If you are not engaged in private practice in Iowa, you may answer No to question 25 and skip questions 26 through 30. If you are engaged in private practice in Iowa, you must answer questions 25 through 30. An attorney in private practice in Iowa includes any active Iowa attorney who resides outside Iowa or maintains a virtual law practice but serves Iowa clients.

You may designate an active Iowa lawyer in good standing, a law firm that includes Iowa attorneys in good standing, or a qualified lawyer servicing association. A qualified lawyer servicing association includes a bar association all of part of whose members are admitted to practice law in Iowa, a company authorized to sell lawyers professional liability insurance in Iowa, or an Iowa bank with trust powers issued by the Iowa Department of Banking. If you are a member of a law firm that includes other Iowa attorneys in good standing, you may designate your own firm to perform these duties.

25. I am engaged in the private practice of law in Iowa Yes / No

26. I designate the following named active Iowa attorney in good standing, qualified lawyer servicing association, or Iowa law firm that includes Iowa attorneys in good standing, as my representative or representatives under Iowa Court Rule 39.18:

Name of Designated Attorney or Entity:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

27. My list of active clients can be found in the custody of the following named person at the location indicated:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

28. My electronic files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your electronic files and records, click the toggle here and proceed to question 29:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

29. My paper files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your paper files and records, click the toggle here and proceed to question 30:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

30. The passwords and other security protocols required to access my electronic files and records can be found in the custody of the following named person at the location indicated:

If the same person listed in response to question 27 has custody of your passwords and other security protocols, click the toggle here and proceed to the questionnaire certification:

Name of Custodian:

Address Line 1:

Address Line 2:

Address Line 3:

City:

State:

Zip Code:

Zip Plus 4:

Telephone Number:

The authority of the attorney or entity I have designated above takes effect upon my death or disability. The designated attorney or entity may apply to the chief judge of the judicial district

in which the designating attorney practiced for an order confirming my death or disability. The authority contained in this designation is durable in the event of my disability.

I authorize the attorney or entity I have designated above to review client files, notify each client of my death or disability, and determine whether there is a need for other immediate action to protect the interests of my clients. I also authorize the attorney or entity designated above to serve as a successor signatory under Iowa Court Rule 45.11 for any client trust account I may have, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. I further authorize the attorney or entity designated under this rule to access my paper and electronic files and records as necessary to perform duties as a designated attorney, and to access passwords and other security protocols required to access those electronic files and records.

I certify that I have read and answered completely and truthfully this statement/questionnaire.

Date

Signature

Make check payable to: Client Security Trust Fund

Mail report and check to: Office of Professional Regulation

Client Security Commission

Judicial Branch Building

1111 East Court Ave.

Des Moines, Iowa 50319

Telephone: (515) 725-8029

Iowa Attorney Disability Planning Documents

February 8, 2017

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PREFATORY NOTE

Iowa Rule 39.18 requires an attorney in private practice to complete their annual questionnaire, pursuant to rule 39.11, whereby such attorney identifies the attorney's designated representative to act in the attorney's stead in the event of death or disability. As long as the annual questionnaire is completed each year, the attorney is in compliance with rule 39.18.

Pursuant to rule 39.18(3), an attorney may adopt a supplemental succession plan. The Iowa Academy of Trust & Estate Counsel, as a service to its members, had the following form succession plan agreement prepared and is making it available to its members. The intent of this supplemental plan and related documents is to supplement the designations made in the annual questionnaire and to address more specifically the numerous issues that may arise in attorney succession. The supplemental plan provided below is aspirational in nature, and will need tailoring to work for the specific facts and circumstances of the Planning Attorney using it.

LAW PRACTICE SUCCESSION PLAN AGREEMENT

This Agreement is entered into this _____ day of _____, 20____, by and between _____ (“*Planning Attorney*”), an individual admitted and licensed to practice as an attorney in the state of Iowa and whose office is located at _____, _____ (“*Designee*”), _____ and whose office is located at _____, and _____ (“*Alternate Designee*”), _____ and whose office is located at _____. Planning Attorney, Designee, and Alternate Designee are referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Planning Attorney is an attorney in private practice whose office is located at _____ (the “*Law Practice*”);

WHEREAS, Planning Attorney has identified Designee as [his/her] designated representative on Primary Attorney’s annual questionnaire filed in compliance with Iowa Rule 39.11 (the “*Annual Questionnaire*”);

WHEREAS, Planning Attorney desires to establish this supplemental succession plan, as permitted pursuant to Iowa Rule 39.18(3), which is intended to supplement the designations made in the Annual Questionnaire and shall govern the attorney or attorneys that serve in the stead of Planning Attorney in the event [he/she] is unable to practice law by reason of death, disability, incapacity or other inability to act;

WHEREAS, Planning Attorney wishes to adopt this plan for the orderly management, and potential closing, of Planning Attorney’s law practice if [he/she] is unable to practice law for any of the above stated reasons;

WHEREAS, Planning Attorney has requested Designee to act in [his/her] stead, in the event any of the above stated events occur, as Planning Attorney’s primary agent and to take all reasonable actions deemed necessary by Designee to manage the affairs of the practice on account of Planning Attorney’s inability to act and Designee has consented to this appointment;

WHEREAS, in the event Designee is unable or unwilling to act as Planning Attorney’s agent hereunder, or to the extent Designee believes a conflict of interest exist between the respective client and Designee, then Alternate Designee has agreed to act as Planning Attorney’s agent, to the extent necessary; and

WHEREAS, Planning Attorney, Designee, and Alternate Designee hereby enter in to this Agreement to define their rights and obligations in connection with the operation, and potential closing, of Planning Attorney’s law practice.

THEREFORE, it is agreed that:

1. **Effective Date.** This Agreement shall become immediately effective as of the date it is executed.

2. **Implementation Date.** This Agreement shall be implemented only upon Planning Attorney's death, incapacity, or other inability to practice law, as established by **Paragraph 3** below, and then only to the extent as required hereunder. The powers granted herein to my Designee shall continue to be effective during any such time that Planning Attorney is subject to a Temporary Disability, or in the event of Planning Attorney's death or Permanent Disability, shall continue until all obligations under this Agreement are satisfied, unless terminated earlier pursuant to **Paragraph 14**.

3. **Determination of Incapacity.** Planning Attorney shall be deemed to be incapacitated or unable to practice law upon the occurrence of one or more of the following:

- a) upon written certification by Planning Attorney's physician (or, if Planning Attorney does not have a regular physician, a duly qualified physician selected by _____ [*consider spouse or children, acting unanimously*]) that by reason of accident, physical or mental deterioration, or other similar cause, Planning Attorney has become incapacitated and/or unable to act rationally or prudently in the management of my legal practice, client matters, and/or the practice of law;
- b) upon Planning Attorney's written request provided to Designee, acknowledging that Planning Attorney will be unable to manage Planning Attorney's Law Practice, manage client files, and/or otherwise carry on the practice of law for a time period (excluding instances of suspension or disbarment) to be specified in such written notice;
- c) upon written notice from a family member or associate of Planning Attorney of Planning Attorney's disappearance, or if Planning Attorney is otherwise unavailable, for a period of at least one week; provided that "disappearance" as used herein shall mean that Planning Attorney's whereabouts are unknown to any immediate family members and Planning Attorney's legal support staff and such individuals are unable to contact or locate Planning Attorney; or¹
- d) upon the Iowa Supreme Court's issuance of an order suspending Planning Attorney from the practice of law pursuant to Rule 34.17(2).

The presumption shall be that any incapacity of Planning Attorney shall be of a temporary nature (such incapacity shall be a "*Temporary Disability*"), except where 1) the physician rendering a written opinion as to Planning Attorney's condition states that the incapacity is believed to be of a permanent nature; or 2) such incapacity has persisted for a period exceeding six (6) months from the date Designee received notice of the incapacity (both events referred to as a "*Permanent Disability*"). Similar evidence to that required in **Paragraph 3 (a)-(c)** may be relied on by Designee that the Planning Attorney is no longer incapacitated.

¹ The Parties can consider if including suspension or disbarment might be appropriate.

4. **Temporary Disability.** During the time Planning Attorney is unable to practice law due to a Temporary Disability, Planning Attorney consents to and authorizes Designee to manage Planning Attorney's Law Practice and shall have all of the powers that Planning Attorney would have and shall be permitted to take any and all actions that Planning Attorney would otherwise be permitted to take if competent and able (subject to the dictates of **Paragraph 9**), with regard to any and all property of the Law Practice associated therein. Such powers granted Designee (subject to the dictates of **Paragraph 9**) shall include, but are not limited, to the following:

a. Physical Access to Office. To enter Planning Attorney's office and use of Planning Attorney's equipment and supplies, as needed.

b. Mail. To open, read, and respond to all mail of Planning Attorney and of the Law Practice in general.

c. Acquire and Possess Property. To obtain, take possession and control any and all property comprising Planning Attorney's Law Practice, including client files and records. To the extent any client files or records are stored offsite, Designee shall have such rights necessary to access such files or records. Designee shall be permitted to examine or copy client files and records of Planning Attorney's Law Practice and obtain information about any pending matters (subject to dictates of **Paragraph 9** governing conflicts of interest). Planning Attorney's last filed Annual Questionnaire identifies the custodian and location of all paper files and records.

d. Authority to Contact Clients. To notify clients, potential clients, and any apparent client of Planning Attorney and to take any action Designee deems necessary or appropriate with regard to the interests of such persons or entities, including advising the client that it is in their best interest at such time to retain other legal counsel. Planning Attorney's last filed Annual Questionnaire identifies the custodian and location of Planning Attorney's client lists.

e. Notification of Courts and Other Interested Parties. To contact opposing counsel, any court or administrative agency to advise them of Planning Attorney's inability to act and of Designee's authority to act on behalf of Planning Attorney. Designee shall be authorized to make any filings deemed necessary or appropriate by Designee, to obtain extensions of time or to provide required notices, motions, and/or pleadings on behalf of clients.

f. Trust Account Management. To access, manage, and make distributions from or deposits to, any and all trust accounts held as part of the Law Practice. Designee shall be granted authority to sign on behalf of Planning Attorney and/or the name of the Law Practice.

g. Fiduciary Roles. To resign any active fiduciary role then held by Planning Attorney.

h. Finance of Law Practice. To pay any and all bills, invoices, and costs of the Law Practice; take any action deemed necessary to bill for any unbilled time and to collect any and all fees and amounts owing to the Law Practice and/or to Planning Attorney; to file any tax returns, issue any tax statements, and pay any taxes on behalf of the Law Practice [and/or [name of entity, if any]]; and to generally manage the finances of the Law Practice.

i. Electronic Records & Email. To access, read, copy, respond to, and use, manage, modify, transfer, delete, and dispose of any and all digital assets used in connection with the Law Practice, including electronic mail, as appropriate. Designee shall also have the power to obtain, access, modify, delete and control Planning Attorney's usernames, passwords, and any other electronic credentials related to Planning Attorney's digital assets or digital devices for the purposes set forth in this Agreement.

For purposes of this Agreement, "digital assets" shall include, but not be limited to information created, generated, sent, communicated, received, or stored by electronic means on any electronic device that can receive, store, process or send digital information, including but not limited to personal computers, tablets, peripherals, storage devices, cellular telephones, and any other similar device that currently exists or may exist as technology develops in addition to e-mail accounts, digital music files, digital photographs, digital videos, blogs, vlogs, written documents, software licenses, social media accounts, file sharing accounts, financial accounts, bank accounts, domain registrations, web hosting accounts, tax preparation and service accounts, online stores, affiliate programs stored on any media in any mode locally or remotely, and any other digital media currently in existence or that may exist as technology develops, regardless of the ownership of the physical device upon which the media is stored, used in connection with the Law Practice. To the extent permitted by law, the powers granted herein shall be considered or deemed to be Planning Attorney's consent for all purposes of the Electronic Communications Privacy Act: Stored Communications Act, 18 U.S.C § 2701 et. seq., and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et. seq., as they may be amended or substituted from time to time.

Planning Attorney's last filed Annual Questionnaire identifies the custodian and location of electronic records, and the custodian and location of passwords and other security protocols required to access electronic files and records.

j. Insurance. To maintain or obtain existing or new insurance as the Designee may deem appropriate.

k. Personnel. To continue to employ the then current staff and employees of the Law Practice; pay all compensation and benefits owing to such staff and employees; manage and supervise such staff and employees; and make any and all decisions related to the dismissal, retention, or hiring of staff, employees, accountants, other attorneys, or other contractors.²

² Given the temporary nature of the disability, you may want to consider limiting the Designee's ability to make hiring/firing decisions.

l. Transfer Client Files. To the extent deemed necessary and appropriate by Designee, obtain client consent to effectuate a transfer of client's files and property to new attorneys, or return of such files or property to the client or to client's designee; and/or to prepare and send a final accounting of client's trust account. [Planning Attorney expressly authorizes Designee to transfer client files to himself or herself.]³

m. Disposal and Storage of Files. To arrange for proper disposal of inactive files, and to arrange for the proper storage of client files and trust account records.

n. Termination of Leases and Other Obligations. To the extent deemed necessary under the circumstances, to terminate or modify any and all legal and business obligations of the Planning Attorney and the Law Practice, including, but not limited, to leases of real estate and/or equipment.

o. General Authority. To take any and all other action, not specified above, deemed appropriate by Designee.

5. **Death or Permanent Disability.**⁴ Upon determination that Planning Attorney is unable to continue practicing law by reason of death or Permanent Disability as provided herein and is unable to close [his/her] law practice due to such death or Permanent Disability, Planning Attorney consents to and authorizes Designee to take all reasonable actions to close or sell Planning Attorney's law practice. Planning Attorney appoints Designee as [his/her] attorney-in-fact with full power to do and accomplish all of the actions expressed and implied by this Agreement as fully and completely as Planning Attorney would do personally but for [his/her] inability. Such powers granted Designee shall include, but are not limited, to the following:

a. Powers by Reference. All such powers granted above in **Paragraph 4** shall be granted to close Planning Attorney's practice. Where any conflict exists, the provisions of this **Paragraph 5** shall control.

b. Decision to Sell or Close. To make the determination, with the consent of Planning Attorney's personal representative (i.e., executor, trustee, or conservator, or other court appointed representative with such authority), as to whether or not it is financially viable to attempt to sell the Law Practice. If a conflict arises between Designee and personal representative, _____.⁵

³ Attorneys may want to consider whether or not to authorize the Designee to transfer files to himself/herself.

⁴ If Planning Attorney has entered into a Buy-Sell Agreement with another attorney to purchase his/her law practice upon his death or permanent disability, then Parties will want to adjust the provisions to require Designee to comply with the terms of such Buy-Sell.

⁵ Attorney will need to consider whose decisions will govern regarding whether to pursue a sale (consider a third party or Alternate Designee). A conflict of interest may exist with respect to the Designee. Additionally, if the Law Practice is located on real estate titled in the name of Attorney, Attorney may consider having his/her spouse execute a spousal consent in order to permit a sale of the Law Practice with the real estate.

c. Actions to Effectuate Sale. If a determination to sell the Law Practice is made pursuant to **Subparagraph (b)** above, to take any and all actions deemed appropriate to sell Planning Attorney's Law Practice including advertising the Law Practice to potential buyers; arranging for appraisal of the Law Practice; extension of any offer to sell or acceptance of any offer to purchase the Law Practice[, unless Designee is the purchaser, in which case the Planning Attorney's personal representative shall approve of any sale to Designee.] [Planning Attorney expressly authorizes Designee to purchase the Law Practice, pursuant to the above dictates.]⁶

d. All Other Authority Necessary. To take any and all other actions deemed necessary to effectuate the sale or closure of Planning Attorney's Law Practice.

6. **Payment for Services.** Designee shall be entitled to receive, and Planning Attorney agrees to pay Designee, Designee's then current hourly rate. Designee shall keep adequate time keeping records to determine amounts due for services rendered. Designee shall submit Designee's time records to Planning Attorney's legal representative or the personal representative of Planning Attorney's estate (as appropriate), who shall have full authority to review and approve all payments. Designee, and any other agent acting under this Agreement on behalf of Planning Attorney, shall be deemed an independent contractor.

7. **Role of Designee.** During any period after the Implementation Date and while Planning Attorney is deceased or subject to Temporary Disability, death, or Permanent Disability, Designee shall be deemed to be Planning Attorney's attorney and Planning Attorney shall be deemed the client of Designee. Planning Attorney expressly authorizes Designee to report to the appropriate disciplinary board and affected client any actual or suspected malpractice, ethical violation, and/or mismanagement of client funds by Planning Attorney or any agent acting on behalf of Planning Attorney.

8. **Alternate Designee.** If Designee is or becomes unable or unwilling to act as Designee, then the Alternate Designee shall step into the shoes of Designee and shall be subject to the same obligations as imposed on the Designee and have the same rights extended to Designee hereunder. Designee may resign by giving thirty (30) days prior written notice of such resignation to the Planning Attorney (or his/her personal representative) and the Alternate Designee.

9. **Ethical Obligations and Conflict of Interests.** Designee shall abide by all ethical obligations and duties in carrying out the obligations imposed hereunder and any powers granted to such Designee shall be subject to such ethical obligations and duties, including, but not limited to, preservation of the attorney client privilege that exists. To the extent Designee determines that [he/she] has a conflict of interest that would preclude Designee from acting on behalf of a respective client, Designee shall notify Alternate Designee of the conflict of interest and Alternate Designee shall be Planning Attorney's designated agent with regard to such client(s) in accordance with **Paragraph 8** above.

⁶ Attorneys may want to consider whether or not to authorize purchase by the Designee.

10. **INDEMNIFICATION AND NO ASSUMPTION OF LIABILITY.** Planning Attorney and [Planning Attorney's Law Practice/PC/PLC as appropriate] agrees to fully indemnify and hold harmless Designee against any claims, loss, or damage arising out of the duties and actions taken hereunder, except to the extent of gross negligence, willful misconduct, or direct violation of this Agreement. Such indemnification shall not encompass Designee's actions or omissions while serving as attorney for any client or former client of Planning Attorney.

Moreover, Designee does not assume and shall not be personally responsible for any liabilities, duties, debts, or obligations of Planning Attorney or [Planning Attorney's Law Practice/PC/PLC as appropriate] and Designee shall not assume any liability for Planning Attorney's actions or any failure to act prior to Planning Attorney's death or incapacitation.

11. **Appointment of Trustee.** In the event proceedings are commenced under the provisions of Iowa Rule 34.17 or 34.18, Planning Attorney nominates Designee to serve as [his/her] trustee; provided that if Designee is or becomes unable or unwilling to so act, then Planning Attorney nominates Alternate Designee to so act.

12. **Durable Power of Attorney.** Contemporaneous with the execution of this Agreement, Planning Attorney shall execute a durable power of attorney, in the form attached as *Exhibit A*, to appoint Designee and Alternate Designee as Planning Attorney's agent with regard to Planning Attorney's law practice and law firm.

13. [To be included only if Law Practice is Separate Business Entity] **Agent of Law Practice.** Planning Attorney has [executed/will execute] a Consent Action (which shall be substantially similar to the Consent Action attached hereto as *Exhibit B*) on behalf of _____, the [corporation or LLC] through which Planning Attorney operates the Law Practice, appointing Designee as Agent of the [corporation/LLC] and Alternate Designee as Successor Agent of the [corporation/LLC] and granting such Agent and Successor Agent authority to act on behalf of the [corporation/LLC] consistent with the terms of this Agreement. Such Consent Action is intended to operate in tandem with this Agreement to permit the Designee/Alternate Designee to act on behalf on the [corporation/LLC] as necessary to carry out Designee's/Alternate Designee's responsibilities hereunder and Planning Attorney's directions herein and, consistent with the Consent Action, the Designee/Alternate Designee shall have all of the powers and be subject to all of the conditions provided herein with respect to the [corporation/LLC].

14. **Early Termination of Agreement; Revocation or Withdrawal of Designee and/or Alternate Designee.**

a. **Termination by Planning Attorney.** Planning Attorney may terminate this Agreement at any time in which Planning Attorney is alive and not subject to a Temporary Disability or Permanent Disability by providing both written notice to the Parties to this Agreement and filing a supplemental statement of change of Designee with the Client Security Commission in accordance with Rule 39.8(1).

b. Revocation by Planning Attorney of Appointment. Planning Attorney may revoke the appointment of Designee and/or Alternate Designee at any time in which Planning Attorney is alive and not subject to a Temporary Disability or Permanent Disability by providing written notice to the Parties to this Agreement. Such revocation shall be effective immediately, and this Agreement shall terminate upon Planning Attorney's execution of a replacement law practice succession plan agreement, unless earlier terminated pursuant to **Subsection (a)** above.

c. Withdrawal if Planning Attorney is Alive and Competent. During any time in which Planning Attorney is alive and is not subject to an incapacity, Designee and/or Alternate Designee may withdraw from this Agreement at any time after providing thirty (30) days written notice of such intent to the other Parties to the Agreement, and this Agreement shall terminate upon Planning Attorney's execution of a replacement law practice succession plan agreement, unless earlier terminated pursuant to **Subsection (a)** above.

d. Withdrawal if Planning Attorney is Deceased or Incompetent. During any time in which Planning Attorney is deceased or is subject to a Temporary Disability or Permanent Disability, Designee and/or Alternate Designee may withdraw from this Agreement ("Withdrawing Attorney") after providing written notice of such intent to Planning Attorney's legal representative (or the personal representative of Planning Attorney's estate) and the other Attorney designated under this Agreement ("Remaining Attorney," i.e., Designee if Alternate Designee is withdrawing or Alternate Designee if Designee is withdrawing), if any, subject to the following terms. If Designee is the Withdrawing Attorney (and Alternate Designee remains able and willing to act under this Agreement), then, within thirty (30) days, Alternate Designee shall step into the shoes of Designee and shall be subject to the same obligations as imposed on Designee and have the same rights extended to Designee hereunder pursuant to **Paragraph 8** hereunder. If Alternate Designee is the Withdrawing Attorney, and is not then serving in the shoes of Designee pursuant to **Paragraph 8** hereunder, then the withdrawal shall be effective thirty (30) days after the Withdrawing Attorney provides notice. If either Designee or Alternate Designee is the Withdrawing Attorney, and there is no Remaining Attorney under this Agreement, then the withdrawal shall not be effective until a qualified attorney has been appointed to serve as a replacement hereunder and court approval has been obtained for such withdrawal and appointment.

15. **Amendments.** Except as otherwise provided **Paragraph 14**, any amendment of or modification to this Agreement must be in a writing signed by all Parties.

16. **Representations.**

a. Designee represents and warrants that Designee is either a qualified attorney-servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing. In the event the representation and warranties of this **Paragraph 16** are no longer true, then the Designee shall immediately

inform Planning Attorney of the change in circumstances so that Planning Attorney may find an alternative party to act as [his/her] Designee.

b. Alternate Designee represents and warrants that Alternate Designee is either a qualified attorney-servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing. In the event the representations made in this **Paragraph 16** are no longer true, then the Alternate Designee shall immediately inform Planning Attorney of the change in circumstances so that Planning Attorney may find an alternative party to act as [his/her] Alternate Designee.

17. **Miscellaneous.**

a. HIPAA Waiver. Planning Attorney authorizes the physician who examines Planning Attorney for the purpose of determining Planning Attorney's capacity or incapacity as provided above in this Agreement to disclose Planning Attorney's physical or mental condition to Designee (or Alternate Designee if Alternate Designee is then serving) for purposes provided in this Agreement. Effective on the execution of this Agreement, Designee and Alternate Designee are designated as Planning Attorney's "personal representatives" as defined in 45 C.F.R. § 164.502(g), enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as the same may be amended, for any purpose related to this Agreement or the determination of capacity/incapacity, including without limitation the authorization to release physician's final determination of Planning Attorney's capacity/incapacity.⁷

b. Counterparts and Electronic Copies. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same. Facsimile copies or other electronically transmitted copies hereof shall be deemed to be originals.

c. Governing Law. This Agreement will be governed by and construed exclusively in accordance with the laws of the State of Iowa and is intended to comply with Iowa Rule 39.18.

d. Entire document. This Agreement (including the Exhibits and Schedules to this Agreement) contains the entire agreement between the Parties with respect to the Transaction, supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the execution date of this Agreement, written or oral.

e. Notice. Any notices required to be provided to any Party shall be delivered by U.S. mail or express courier to the addresses below, by facsimile to the numbers below, or by email to the email addresses below. The information provided below may be revised by the respective Parties with 30 days written notice to the other Parties of the change.

To Planning Attorney: _____

⁷ The HIPAA waiver may need to be expanded to include broader access to medical records if the Agreement directs the Designee to make the determination of capacity/incapacity.

Address: _____

Phone: _____

Fax: _____

Email: _____

To Designee:

[_____]

Address: _____

Phone: _____

Fax: _____

Email: _____

To Alternate Designee:

[_____]

Address: _____

Phone: _____

Fax: _____

Email: _____

[Remainder of page intentionally left blank; signature pages to follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

[Planning Attorney]

Date

STATE OF IOWA)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared [Planning Attorney], to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that such person executed the same as such person's voluntary act and deed.

NOTARY PUBLIC – STATE OF IOWA
My Commission Expires: _____

_____)
[Designee]

_____)
Date

STATE OF IOWA)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared [Designee], to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that such person executed the same as such person's voluntary act and deed.

NOTARY PUBLIC – STATE OF IOWA
My Commission Expires: _____

[Alternate Designee]

Date

STATE OF IOWA)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared [Alternate Designee], to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that such person executed the same as such person's voluntary act and deed.

NOTARY PUBLIC – STATE OF IOWA
My Commission Expires: _____

EXHIBIT A

Durable Power of Attorney

EXHIBIT B

[insert Consent Action if applicable]

PROVIDING FOR DESIGNATED ATTORNEY (AND ALTERNATE) IN ESTATE PLANNING DOCUMENTS

In addition to executing an agreement governing the management of your law practice upon your death, incapacity, or inability to practice law for any reason, a durable limited power of attorney, and, if you operate as an entity, any necessary consent actions, you will want to include a provision in your estate planning documents that deals with the closure and sale of your practice upon your death as your executor, trustee, or other personal representative will otherwise have authority over your assets, including your practice. Sample provisions to include in a will or revocable trust are provided below.

Sample Will Provision

I direct and authorize my Executor to act in accordance with the Agreement entered into by **[Designated Attorney]**, **[Alternate Attorney]**, and me on _____, 20__, as it may be updated an amended from time to time (“Agreement”), with respect to my law practice located at _____. My Executor is authorized and directed to grant the necessary authority to **[Designated Attorney]** (or if he/she cannot or will not act, **[Alternate Attorney]**) to handle the closing and sale of my law practice (including without limitation managing the transfer of client files, handling time sensitive client matters in accordance with all applicable rules and regulations, and paying any bills and collecting outstanding fees), provided that if **[Designated Attorney]** (or **[Alternate Attorney]**) wishes to purchase my practice, then my Executor shall take any steps necessary to ensure that my Estate obtain the best possible price (including without limitation engaging **[Alternate Attorney]** (if **[Designated Attorney]** wishes to purchase the practice) or another attorney to assist in the sale). If such Agreement is not in effect at the time of my death (or if neither **[Designated Attorney]** nor **[Alternate Attorney]** is willing and able to serve), then I direct my Executor to enter into a similar agreement with comparable terms with another licensed Iowa attorney in good standing as soon as reasonably practicable following my death to manage the closure and sale of my practice. My Executor shall pay **[Designated Attorney]** (or **[Alternate Attorney]**) such fees from my estate assets as required pursuant to the Agreement, and such payment shall be made before any final distribution to any beneficiary hereunder.

Sample Revocable Trust Provision

Grantor directs and authorizes the Trustee to act in accordance with the Agreement entered into by **[Designated Attorney]**, **[Alternate Attorney]**, and Grantor on _____, 20__, as it may be updated an amended from time to time (“Agreement”), with respect to Grantor’s law practice located at _____. The Trustee is authorized and directed to grant the necessary authority to **[Designated Attorney]** (or if he/she cannot or will not act, **[Alternate Attorney]**) to handle the closing and sale of Grantor’s law practice (including without limitation managing the transfer of client files, handling time sensitive client matters in accordance with all applicable rules and regulations, and paying any bills and collecting outstanding fees), provided that if **[Designated Attorney]** (or **[Alternate Attorney]**) wishes to purchase Grantor’s practice, then the Trustee shall take any steps

necessary to ensure that this Trust obtains the best possible price (including without limitation engaging **[Alternate Attorney]** (if **[Designated Attorney]** wishes to purchase the practice) or another attorney to assist in the sale). If such Agreement is not in effect at the time of Grantor's death (or if neither **[Designated Attorney]** nor **[Alternate Attorney]** is willing and able to serve), then Grantor directs the Trustee to enter into a similar agreement with comparable terms with another licensed Iowa attorney in good standing as soon as reasonably practicable following Grantor's death to manage the closure and sale of Grantor's practice. The Trustee shall pay **[Designated Attorney]** (or **[Alternate Attorney]**) such fees from the Trust estate assets as required pursuant to the Agreement, and such payment shall be made before any final distribution to any beneficiary hereunder.

DURABLE LIMITED POWER OF ATTORNEY
FOR MANAGEMENT OF LAW PRACTICE UPON INCAPACITY OR
INABILITY TO PRACTICE LAW FOR ANY REASON

1. Designation of Agent.

I, **[Planning Attorney]**, a licensed Iowa attorney in private practice, appoint **[Designated Attorney]**, a licensed Iowa attorney, as my Agent for the purposes and under the circumstances provided herein. If **[Designated Attorney]** should be or become unable or unwilling to serve as my Agent for these limited purposes, then I appoint **[Alternate Designee]**, a licensed Iowa attorney, as my Successor Agent for the purposes and under the circumstances provided herein. The term “*Agent*,” as used herein, shall refer to the initial and Successor Agent unless otherwise provided herein.

2. Effective Date and Durability.

This Power of Attorney shall become effective only upon the occurrence of one or more of the following:

- e) upon written certification by my physician (or, if I do not have a regular physician, a duly qualified physician selected by _____ [*consider spouse or children, acting unanimously*]) that by reason of accident, physical or mental deterioration, or other similar cause, I have become incapacitated and/or unable to act rationally or prudently in the management of my legal practice, client matters, and/or the practice of law;
- f) upon my written request provided to my Agent, acknowledging that I will be unable to manage my law practice, manage client files, and/or otherwise carry on the practice of law for a time period (excluding instances of suspension or disbarment) to be specified in such written notice;
- g) upon written notice from a family member or a member of my legal support staff of my disappearance, or if I am otherwise unavailable, for a period of at least one week; provided that “disappearance” as used herein shall mean that my whereabouts are unknown to any immediate family members and my legal support staff and such individuals are unable to contact or locate me; or⁸

⁸ The Parties can consider if including suspension or disbarment might be appropriate.

- h) upon the Iowa Supreme Court's issuance of an order suspending Planning Attorney from the practice of law pursuant to Rule 34.17(2).

The presumption shall be that my incapacity shall be of a temporary nature (such incapacity shall be a "*Temporary Disability*"), except where 1) the physician rendering a written opinion as to my condition states that the incapacity is believed to be of a permanent nature; or 2) such incapacity has persisted for a period exceeding six (6) months from the date Agent received notice of the incapacity (referred to a "*Permanent Disability*"). Similar evidence to that required in **Paragraph 2 (a)-(c)** may be relied on by Agent that I am no longer incapacitated.

This Power shall continue to be effective until the earlier of my recovery from my incapacitation or my death; provided however, that this Power may be revoked by me as to my Agent at any time by providing both written notice to such Agent and filing a supplemental statement of change of Designee with the Client Security Commission in accordance with Rule 39.8(1). Similar evidence to that required in Paragraph 2 (a)-(c) may be relied on by Designated Attorney that the Planning Attorney is no longer incapacitated.

I authorize the physician who examines me for the purpose of determining my capacity or incapacity as provided above in this Durable Limited Power of Attorney to disclose my physical or mental condition to my Agent for purposes provided in this Durable Limited Power of Attorney. Effective on the execution of this Durable Limited Power of Attorney, my Agent is designated as my "personal representatives" as defined in 45 C.F.R. § 164.502(g), enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as the same may be amended, for any purpose related to this Durable Limited Power of Attorney or the determination of capacity/incapacity, including without limitation the authorization to release physician's final determination of my capacity/incapacity.⁹

3. Limited Powers of Agent during Temporary Disability.

My Agent (and Successor Agent) and I have executed a Succession Agreement dated _____, 20__ ("Succession Agreement") that governs the management of my law

⁹ The HIPAA waiver may need to be expanded to include broader access to medical records if the POA directs the Agent to make the determination of capacity/incapacity.

practice and client files upon my death, incapacity, or inability to practice law for any reason. A copy of the Succession Agreement is attached to this Power of Attorney as **Exhibit A**.

My Agent shall have the power and authority to perform any and all duties, to take any and all actions, and to execute any and all documents and agreements necessary to comply with the terms of that Succession Agreement and my Agent shall act in accordance with such Succession Agreement at all times that my Agent is serving hereunder. Without limiting the foregoing, my Agent shall have the specific powers granted to my Designee in **Paragraph 4** of the Succession Agreement during any period in which I am subject to a Temporary Disability.

4. Limited Powers of Agent during Permanent Disability.

My Agent shall have the power and authority to perform any and all duties, to take any and all actions, and to execute any and all documents and agreements necessary to comply with the terms of the Succession Agreement and my Agent shall act in accordance with such Succession Agreement at all times that my Agent is serving hereunder. Without limiting the foregoing, my Agent shall have the specific powers granted to my Designee in **Paragraph 5** of the Succession Agreement during any period in which I am subject to a Permanent Disability.

5. Liability of Agent.

My Agent shall not be liable for any loss sustained through an error of judgment made in good faith, but shall be liable for gross negligence, willful misconduct or bad faith in the performance of any of the provisions of this Power of Attorney.

6. Compensation of Agent.

My Agent shall be compensated pursuant to the terms of the Succession Agreement and my Agent agrees that any services performed as my Agent hereunder will be done without compensation apart from that provided under the terms of the Succession Agreement, either during my life or upon my death, but my Agent shall be entitled to reimbursement for all

reasonable expenses incurred as a result of carrying out any provisions of this Power of Attorney.

7. Accounting by Agent.

Upon my request, the request of my Conservator, or the request of the personal representative of my Estate, or the request of the Trustee of my Revocable Trust, my Agent shall provide a complete accounting as to all acts performed pursuant to this Power of Attorney.

8. Protection of Third Parties.

No person who relies in good faith upon any representations by my Agent shall be liable to me, my Estate, my heirs or assigns, for recognizing the Agent's authority hereunder.

EXECUTED on this ____ day of _____, 20__, at _____,
_____ County, Iowa.

[Planning Attorney]

STATE OF IOWA)

) ss:

COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared [**Planning Attorney**], to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that such person executed the same as such person's voluntary act and deed.

NOTARY PUBLIC – STATE OF IOWA

My Commission Expires:

**LAW PRACTICE BUSINESS ENTITIES: APPOINTMENT OF AGENT TO MANAGE LAW
PRACTICE UPON DEATH OR INCAPACITY**

In addition to an attorney, as an individual, executing an agreement and power of attorney (and accounting for the succession plan in his or her estate planning documents), when an attorney in private practice operates as an entity, such as a professional corporation or a professional limited liability company, the entity must also authorize someone to act on the entity's behalf if that attorney dies, becomes incapacitated, or is unable to carry on the practice of law for any reason. Such authorization will obviously need to be taken before the attorney dies or becomes incapacitated. A simple way to address this issue is for the entity to execute a consent action authorizing the attorney's agent or back-up agent to act on the entity's behalf if the attorney/member cannot act.

An entity may execute a consent action rather than hold a formal meeting to appoint an agent (pursuant to Iowa Code §§ 496C.3, 490.704, and 490.821 in the case of a professional corporation and pursuant to Iowa Code § 489.407 in the case of a professional limited liability company). A sample consent action is provided for both a professional corporation and a professional limited liability company. The attached form consent actions assume only one shareholder/member and one director/manager. These consent actions should be tailored and edited to reflect the specific facts and circumstances of the particular law firm.

**CONSENT ACTION OF THE
SOLE DIRECTOR AND SOLE SHAREHOLDER OF
[NAME OF CORPORATION]**

As authorized and permitted pursuant to Section 3 of the Iowa Professional Corporation Act, and Sections 704 and 821 of the Iowa Business Corporation Act, as amended, the undersigned, representing the sole shareholder (“*Shareholder*”) and sole director (“*Director*”) of _____, an Iowa professional corporation (the “*Corporation*”), do hereby agree and consent to the following resolutions, said resolutions to have the same force and effect as if such action had been taken by unanimous vote of the sole Shareholder and Director at a meeting of the Shareholders and Directors duly and regularly held.

**APPOINTMENT OF AGENT TO ACT ON BEHALF OF CORPORATION IN EVENT OF
SHAREHOLDER’S INABILITY TO PRACTICE LAW**

WHEREAS, the Shareholder/Director desires to comply with Iowa Rule 39.18 and believes it prudent and necessary to appoint an Agent (and a Successor Agent) to act on behalf of the Shareholder with regard to business of the Corporation during any time in which the sole Shareholder of the Corporation is unable to practice law, whether on a permanent or a temporary basis;

WHEREAS, the Shareholder/Director wishes to appoint a licensed attorney to act as the Agent of this Corporation in the event Shareholder is unable to practice law until such time as the practice of the Corporation is sold or, in the case of temporary incapacity, the sole Shareholder is able to return to practice. Such Agent would also be appointed to act on behalf of the Corporation and to perform any and all duties, take any and all actions, and to execute any and all documents necessary in the event the sole Shareholder of the Corporation was no longer able to perform the day-to-day operations of the Corporation due to his/her death, disability or incapacity; and

WHEREAS, the Shareholder/Director has entered or will enter, concurrent with the execution of this Consent Action, enter into an Agreement with _____ and _____, dated _____ (the “Agreement”) addressing management of the law practice upon the Shareholder’s/Director’s death, incapacity, or inability to practice law for any reason.

RESOLVED, that _____ is hereby appointed as Agent of the Corporation to act on behalf of the Corporation and, in the event of Shareholder’s/Director’s death, incapacity, or inability to practice law for any reason, to perform any and all duties, to take any and all actions, and to execute any and all documents and agreements necessary for the maintenance of the Corporation or the sale, winding-up, liquidation, and/or dissolution of the Corporation in the event of the Shareholder’s consistent with and in compliance with all of the terms and conditions of the Agreement. Such Agent shall have the right to take any and all actions that the Shareholder and Director could take, if the Shareholder/Director were competent and able, consistent with the terms of the Agreement.

FURTHER RESOLVED, that in the event _____ is or becomes unable or unwilling to serve as Agent (including without limitation if he/she no longer practices law in the State of Iowa) during any period in which the Shareholder is deceased, incapacitated, or unable to practice law for any reason, then _____ is appointed as Successor Agent of the Corporation.

FURTHER RESOLVED, that this Corporation be authorized and directed to enter into any Agreements and the officers of this Corporation are directed and authorized to execute and deliver any documentation that may be necessary to effectuate the foregoing resolution.

FURTHER RESOLVED, that the Secretary of this Corporation is directed to include in the records of the Corporation any and all agreements and documentation to which the Corporation is a party that evidence the appointment of _____ and _____ in the capacity set forth in the foregoing resolutions.

GENERAL AUTHORITY TO EFFECTUATE RESOLUTIONS

RESOLVED, that each Officer of the Corporation be, and each of them hereby is, authorized to do or cause to be done, in the name and on behalf of the Corporation, any and all such acts and things, and to exercise, deliver and file, in the name and on behalf of the Corporation or otherwise, and all such agreements, applications, certificates and other documents and instruments, as such Officer may deem necessary, advisable or appropriate to effectuate the foregoing resolutions.

This consent may be executed in one or more counterparts, each of which shall be deemed an original and together constitute one and the same consent. The foregoing resolutions have been adopted by the unanimous written consent of the Directors and the Shareholder of the Corporation.

DIRECTOR:

SHAREHOLDER:

**CONSENT ACTION OF THE
SOLE MANAGER AND SOLE MEMBER OF
[NAME OF COMPANY]**

The undersigned, constituting the sole member (the “*Member*”) and sole manager (the “*Manager*”) of _____, an Iowa professional limited liability company (the “*Company*”), does hereby agree and consent to the following resolutions, said resolutions to have the same force and effect as if such action had been taken by unanimous vote of the sole Member and sole Manager at a meeting of the Members and Manager duly and regularly held.

**APPOINTMENT OF AGENT TO ACT ON BEHALF OF COMPANY IN EVENT OF
MEMBER’S INABILITY TO PRACTICE LAW**

WHEREAS, the Member/Manager desires to comply with Iowa Rule 39.18 and believes it prudent and necessary to appoint an Agent (and a Successor Agent) to act in the capacity of the Member in the event the sole Member of the Company is unable to practice law, whether on a permanent or a temporary basis;

WHEREAS, the Member/Manager wishes to appoint a licensed attorney to act as Agent of this Company in the event Member is unable to practice law until such time as the practice of the Company is sold or, in the case of temporary incapacity, the sole Member is able to return to the practice of law. Such Agent would also be appointed to act on behalf of the Company and to perform any and all duties, take any and all actions, and to execute any and all documents necessary in the event the sole Member/Manager of the Company was no longer able to perform the day-to-day operations of the Company due to his/her death, disability, or incapacity; and

WHEREAS, the Member/Manager has entered or will enter, concurrent with the execution of this Consent Action, into an Agreement with _____ and _____, dated _____ (the “Agreement”) addressing management of the law practice upon the Member’s/Manager’s death, incapacity, or inability to practice law for any reason.

RESOLVED, that _____ is hereby appointed to act as Agent of the Company and, in the event of Member’s/Manager’s death, incapacity, or inability to practice law for any reason, to perform any and all duties, to take any and all actions, and to execute any and all documents and agreements necessary for the maintenance of the Company or the sale, winding-up, liquidation and/or dissolution of the Company in the event of the Member/Manager’s consistent with and in compliance with all of the terms and conditions of the Agreement. Such Agent shall have the right to take any and all actions that the Member and Manager could take, if the Member/Manager were competent and able, consistent with the terms of the Agreement.

FURTHER RESOLVED, that in the event _____ is or becomes unable or unwilling to serve as Agent (including without limitation if he/she no longer practices law in the State of Iowa) during any period in which the Member is deceased,

incapacitated, or unable to practice law for any reason, then _____ is appointed as Successor Agent of the Company.

FURTHER RESOLVED, that this Company be authorized and directed to enter into any Agreements and the officers of this Company are directed and authorized to execute and deliver any documentation that may be necessary to effectuate the foregoing resolution.

FURTHER RESOLVED, that the Secretary of this Company be directed to include in the records of the Company any and all agreements and documentation to which the Company is a party that evidence the appointment of _____ and _____ in the capacity set forth in the foregoing resolutions.

GENERAL AUTHORITY TO EFFECTUATE RESOLUTIONS

RESOLVED, that each Officer of the Company be, and each of them hereby is, authorized to do or cause to be done, in the name and on behalf of the Company, any and all such acts and things, and to exercise, deliver and file, in the name and on behalf of the Company or otherwise, and all such agreements, applications, certificates and other documents and instruments, as such Officer may deem necessary, advisable or appropriate to effectuate the foregoing resolutions.

The foregoing resolutions have been adopted by the unanimous written consent of the sole Manager and the sole Member of the Company.

MANAGER:

MEMBER:

APPENDIX D - Checklist – Preparing a Law Practice for Death, Disability, or Incapacity

Much of the confusion and expense involved in transition of your practice after your death or disability can be minimized by some prior planning and disciplined conduct of your practice prior to your departure. Some recommended tasks in preparation of your practice are as follows:

Introduce your designated attorney to your staff. Make certain your staff knows how to contact the designated attorney if an emergency occurs before or after office hours. If you practice without regular staff, make sure another appropriate person (spouse, significant other, landlord, for example) knows how to contact your designated attorney and arrange access to your office.

Inform your spouse, significant other, or closest living relative, and the personal representative of your estate of your designation and how to contact the designated attorney.

Forward the name, address, and phone number of your designated attorney to your professional liability insurance carrier. This will enable your carrier to locate the designated attorney in the event of your death, disability, impairment, or incapacity.

Review your designation with your designated attorney annually.

Familiarize your designated attorney with your office systems and keep him or her apprised of office changes.

Consult with your bank to ensure that your designations pertaining to authority over bank accounts will be honored. You may find it necessary to prepare a separate, successor signatory document under rule 45.11 to satisfy your bank.

Make sure all your file deadlines (including follow-up deadlines) are calendared, and your staff or software can produce an accurate list of the deadlines.

Keep your trust account and billing records up-to-date.

Prepare a law office list of contacts. Make sure your designated attorney has a copy.

Ensure your staff or software can produce an accurate list of current clients, addresses and telephone numbers.

Avoid keeping original client documents (e.g., wills, abstracts) in client files; consolidate and index your holdings of these documents or return them to clients.

Periodically purge paper files after proper notice to the clients and passage of the minimum retention period suggested in the following section of the outline. If possible, transition to files in electronic form only to avoid having to dispose of paper files.

Include provisions in your engagement letters and fee contracts regarding disposition of client files once a matter is concluded.

Include provisions in your retainer agreements and engagement letters that disclose that you have arranged for a designated attorney to close your practice in the event of death, disability, impairment, or incapacity.

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 account records (trust and general);
- m. Where to find, or who knows about, the computer passwords;
- n. How to access your voice mail (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.

Appendix E – Checklist for Actions by the Attorney Designated under the “First Tier”

The duties of an attorney designated under the “first tier” provisions of rule 39.18 are limited to basic protection of client interests. The rule authorizes the designated attorney to review client files, notify each client of the planning attorney’s death or disability, properly dispose of inactive files, arrange for storage of files and trust account records, and determine if there is a need for other immediate action to protect the interests of the clients. The attorney designated under the “first tier” provisions also is authorized as a successor trust account signatory and may prepare final trust accountings and make trust account disbursements. Recommended actions by the designated attorney upon death or disability of the planning attorney are as follows:

Confirm the Death or Disability of the Planning Attorney: If there is any doubt regarding the existence of conditions triggering actions under the designation, the designated attorney may apply to the chief judge of the judicial district in which the planning attorney practiced for an order confirming the planning attorney’s death or disability.

Acquire Proof of Authority as Designated Attorney: Once the planning attorney has submitted an annual client security questionnaire in compliance with rule 39.18, he or she will have the ability to print out a designation form from his or her lawyer account page, execute it before a notary, and provide the executed form to the designated attorney. The designated attorney likely will need the executed designation form to establish his or her authority to administer the practice. If the designation form executed by the planning attorney is not available, the Office of Professional Regulation will be able to print out and provide a similar designation form, executed by the director or an assistant director of OPR based on the official records at OPR.

Access the Files and Records: The designated attorney should secure the office, files, and other practice property of the planning attorney, including trust account records and the trust account checkbook. If the planning attorney maintained client files or trust account records electronically, it may be necessary also to secure the computers, along with the user names and passwords for access.

Tip: The planning attorney is required to specify the “custodian” and location of the client list, electronic and paper files and records, and the passwords and other security protocols required to access electronic files and records. The Office of Professional Regulation can advise the designated attorney regarding the identity of the custodian and the specified locations of the materials based on the last client security questionnaire filed with the Client Security

Commission. The best practice, however, is for the planning attorney to directly advise the designated attorney of that information.

Assess the Situation: A designated attorney may petition the district court at any time for appointment as the trustee or appointment of a different attorney as a trustee under the provisions of rules 34.17 or 34.18. Once the designated attorney has assumed duties, he or she should assess the condition of the planning attorney's practice and determine if the duties under the "first tier" of rule 39.18 can be performed and the designated attorney can be properly compensated without court supervision and assistance. If court supervision and assistance seems necessary, an application for appointment of a trustee should be filed.

Tip: The level of preparation of the practice at the time of the planning attorney's death or disability will be a key factor in determining whether a trustee appointment will be necessary. For example, if the planning attorney's trust account records are inadequate to establish client entitlements to funds in the trust account, or the trust account balance appears insufficient to honor all client claims on the account, a trusteeship may be necessary to adjudicate disbursement of the trust account. A second key factor will be whether it appears the designated attorney will be directly compensated for his or her time and expenses by the planning attorney or his or her estate. If there is doubt regarding compensation of the planning attorney, a trustee appointment will make reimbursement by the Client Security Commission possible.

Provide Notice to the Planning Attorney's Clients and Other Interested Persons: The designated attorney should provide notice of the death, suspension, or disability to the planning attorney's clients, opposing counsel, and the court in all pending matters, and notify clients of their right (and need) to pick up their file and engage other counsel. See Iowa R. Prof'l Conduct 32:1.16(d)(duties to clients upon termination of representation). Clerks of court or court administrators for those counties where the planning attorney practiced can provide lists of open cases in which the planning attorney has appeared. Identify imminent deadlines if possible, and provide specific notice to clients regarding these deadlines.

Protect the Confidences of Clients: The designated attorney must be alert for conflicts of interest with his or her own practice and address them as contemplated in rule 39.18(5). The designated attorney should avoid examining any documents or acquiring information creating a conflict with the designated attorney's clients. If the designated attorney inadvertently acquires such information, rule 39.18(5) calls for prompt recusal or refusal of employment to protect the interests of the planning attorney's clients.

Tip: Once the duties of the designated attorney are triggered, the designated attorney will want to examine the planning attorney's client list for potential conflicts with the designated attorney's client list before accessing any of the planning attorney's client files.

Distribute Files to Active Clients: The planning attorney should use the planning attorney's list of current clients and the list of the planning attorney's open cases provided by the clerks of court or district court administrator to determine what clients have open matters. Those clients should be contacted immediately, advised of the planning attorney's inability to continue representing them, and asked to pick up their file and seek new counsel.

Safeguard or Properly Dispose of Inactive Files: Inventory and return files to clients to the extent possible; provide proper notice before destruction of any files; make arrangements for files eligible for immediate destruction, long-term storage of files not eligible for immediate destruction, and for ultimate destruction authority for retained files. See Iowa R. Prof'l Conduct 32:1.16(d).

Reconcile the Trust Account and Make Proper Disbursements: Locate all trust account monies and records, coordinate with the depository institutions to execute new signature cards to prevent dissipation by former signatories on the accounts, reconcile the account statements and client ledger cards, and return all monies to the rightful owners. See Iowa R. Prof'l Conduct 32:1.15(d), Iowa Court Rule 45.2(2) (prompt accounting and return of funds or property clients or third persons are entitled to receive). Accounting assistance from the Client Security Commission should be requested if the condition or complexity of the accounting records exceeds the capabilities of the designated attorney, especially if there may be shortages in the account. Designated attorneys should be careful about returning trust account monies to clients before the account is completely reconciled.

Tip: If the trust account balance is not sufficient to reimburse all parties for whom trust account balances should exist, the only solution may be to formulate a plan of distribution and present it to the district chief judge for approval. When a trust account balance has been insufficient to fully pay all clients for whom funds should be available in the trust account, the practice in trusteeships under rules 34.17 and 34.18 has been to pay the clients on a pro rata basis from the trust account balance, and assist the clients with filing claims with the Client Security Commission for reimbursement of the unpaid balance from the Client Security Trust Fund.

ATTORNEY DEATH & DISABILITY PLANNING

IOWA STATE BAR ASSOCIATION
APRIL 2017

Office of Professional Regulation
Paul Wieck & N.Tré Critelli

Simmons, Perrine, Moyer, Bergman PLC
Laura Jensen & Travis Cavanaugh

WHY PLAN FOR DEATH OR DISABILITY?

- Duty of diligent representation includes safeguarding client interests in event of death or disability
- Iowa attorneys in private practice must accomplish “first tier” duties of Iowa Court Rule 39.18
- Ethical obligation to plan for protection of client confidences and secrets
- Help preserve your practice for eventual disposition
- Your professional liability carrier may require it
- Ease the burden on your family
- Minimize claims against the Client Security Trust Fund
- Show clients one last measure of your professionalism

RULE 32:1.3 DILIGENCE

- A lawyer shall act with reasonable diligence and promptness in representing a client
- To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action [Comment 5]

OTHER APPLICABLE IOWA RULES

- R. Prof'l Conduct 32:1.9(c)(2) (Confidentiality of Information)
- R. Prof'l Conduct 32:1.5(e)(Fees)
- R. Prof'l Conduct 32:1.16 (Declining or Terminating Representation)
- R. Prof'l Conduct 32:1.17 (Sale of Law Practice)
- Iowa Ct. R. 34.17 (Disability Suspension)
- Iowa Ct. R. 34.18 (Death, Suspension or Disbarment of Practicing Attorney)
- Iowa Ct. R. 45.11 (Successor Signatory for Trust Account)

Iowa Ct. R. 39.18 – Requirement for Death or Disability Designation and Authorization

- Effective December 25, 2017 (2018 Report Filing Season)
- Mandatory "First Tier"
 - All attorneys in private practice in Iowa must complete
 - If a member of firm with other Iowa attorneys, may designate firm
 - Attorneys not actually practicing in Iowa may opt out
 - Part of the annual client security questionnaire
 - Duty to supplement responses within 30 days of change
- Optional "Second Tier"
 - Written plan created by attorney
 - Guidance and authority for law firm management and administrative tasks

DEFINITIONS

- *Designated Attorney* refers to the lawyer designated under the provisions of rule 39.18 to administer the practice of a deceased or disabled attorney
- *Planning Attorney* refers to the attorney making the designation, whose practice is to be administered
- *Qualified Attorney-Servicing Association* means any of the following:
 - A bar association all or part of whose members are admitted to practice in Iowa,
 - A company authorized to sell professional liability insurance to Iowa attorneys
 - An Iowa bank with trust powers issued by the Iowa Division of Banking

“FIRST TIER” DESIGNATIONS

- Must designate active Iowa attorney, law firm with an active Iowa attorney, or qualified attorney-servicing association (Designated attorney or entity)
 - No attorney or entity is obligated to offer services
 - Planning attorney should not designate an attorney or entity that has not consented to provide services
 - Client Security questionnaire will ask if designated attorney or entity has consented
 - Designated attorney, firm, or association will have authority to perform enumerated tasks intended to protect client interests
 - Authority becomes effective upon death or disability of planning attorney
- Must designate custodian and location of:
 - Client list (must maintain, in an accessible location)
 - Electronic and paper files and records
 - Password and security protocols to access electronic files and records

AUTHORITY OF DESIGNATED ATTORNEY OR ENTITY

- Review client files
- Notify clients of the planning attorney's death or disability
- Determine if other actions are necessary to protect the clients' interests
- Administer the planning attorney's trust account
- May apply to the district chief judge for order confirming death or disability of the planning attorney
- If beneficial or appropriate, may petition for appointment of a trustee under the provisions of rules 34.17 or 34.18

PLANNING ATTORNEY IMPLEMENTATION OF “FIRST TIER” DUTIES

- Select your designated attorney or entity
- Familiarize designated attorney or entity with your offices procedures and system
- Brief law office staff and family regarding the designation
- Make designations as part of annual client security questionnaire
- Print out designation form, execute, provide to designated attorney or entity
- Notify clients of the designation
- Prepare your practice

PLANNING ATTORNEY IMPLEMENTATION OF "SECOND TIER" OPTIONS

- Written agreement and POA designating planning attorney and specifying duties
- ITEC forms:
 - Agreement and plan for law practice succession
 - Durable power of attorney for law practice management
 - Provisions for use in estate planning documents
 - Agency appointments for use by law practice business entities

PREPARING YOUR PRACTICE

- Familiarize designated attorney with your practice management system
- Consult with your bank to ensure the designation will be honored; cover with separate rule 45.11 designation if necessary
- Ensure your staff or software can produce an accurate list of current clients, addresses and telephone numbers
- Ensure your staff or software can produce an accurate list of deadlines in pending matters
- Keep your billing and trust account records up to date
- Avoid keeping original client documents (e.g., wills, abstracts) in client files; consolidate and index your holdings of these documents or return them to clients
- Periodically purge old paper files after notice to the clients

PREPARING YOUR PERSONAL AFFAIRS

- Maintain a current will
- Include language in will regarding administration of the practice
- Consider life insurance or business continuity insurance to fund short-term continuation of the practice

HANDLING CLIENT FILES

- Cannot summarily destroy any client files
- Original wills, abstracts and any other specific client property must be removed from files and returned to rightful owners
- Custodian must attempt to contact and return all files to the client involved
- Custodian must give client notice before disposing of the client's file
- Where client cannot be found, district court typically orders retention of file for a set period of years after notice by publication

CLIENT FILES – MINIMIZING THE BURDEN

- Determine what normal retention period(s) you will apply:
 - 6 years per Iowa Court Rule 45.2(2)?
 - Extended period per professional liability carrier?
 - Extended period based on limitation periods of other kinds?
- Segregate, safeguard, and index abstracts, original wills (or don't keep them at all)
- Include an agreement and consent regarding file destruction in your initial engagement agreement with each client, or in arrangements you make upon termination of representation
- Based on client consent, periodically purge files of client property and then destroy paper files in manner that preserves confidentiality

PLANNING GUIDELINES FOR MEMBER OF A FIRM

- Planning attorney is a member of a law firm that includes other Iowa attorneys in good standing may designate his or her own firm
- Include provisions for death, disability of member lawyers in the firm organizational document
- Address law firm authority and duties after lawyer death or disability
- Consider attorney designations within the firm
- Address lawyer duties during routine practice

OPR IMPLEMENTATION OF RULE 39.18

- Additions to Annual Client Security Questionnaire to Permit Designations
- Ability to Update Designations Between Annual Reports
- Validation of Submitted Designations Incident to Report Filing
- Designation Form for Execution by Planning Attorney
- Designation Form for Execution by OPR Staff

CLIENT SECURITY QUESTIONNAIRE

PROTOTYPE SCREENS

Submit Annual Client Security Report

This process is used to file your annual report with the Client Security Commission and pay required fees and assessments. Under Rule 39.18(b) you are required to prepare and file a Combined Statement and Questionnaire with the Commission in the year of your admission to the bar, and every two (2) years thereafter until you have been admitted to the bar in another jurisdiction. **You must file complete and file this form with the Commission on or before March 15th of each year. A penalty automatically is assessed and payable with respect to any report not filed with the Commission on or before March 15th.**

Changes in your personal information cannot be made directly as part of this reporting process. If changes are necessary in your personal information, you should click on the "My Account Page for Lawyers and click on the "Personal Information" button to make these changes before returning to this reporting process.

The first page of the report process shows your current status as reflected on the records of the Client Security Commission. In some situations this status may be amended as part of your annual report process, and in other situations an amendment must be made by the staff at the commission office. You should reach the staff regarding the status used for further information.

The total amount of this process covers the fees and assessments you will be required to pay based on your current status. Fees due with this report are specified in Rules 39.1 and 39.6, as follows:

Annual fee to report the Designation System: Unless you qualify for an exemption specified in the rules, you are required to pay an annual fee of \$150 for the reporting system. Lawyers do not have to pay this fee if they are currently admitted to the bar in another jurisdiction and are currently practicing law in that jurisdiction. Lawyers who are currently admitted to the bar in another jurisdiction and are currently practicing law in that jurisdiction are exempt from the assessment. Lawyers who previously have paid \$200 or more in assessments will have a single assessment to pay if a single assessment is due depending on the status of their fee. Additional information regarding the required assessment is available in Rule 39.6(a) and in the annual reporting instructions issued by the Office of Professional Regulation.

Assessment to the Client Security Trust Fund: The commission's reporting system will automatically calculate your required assessment for the Client Security Trust Fund based on your commission status and the new assessments to be paid. Lawyers who have not previously paid a fee of \$200 in assessments will have an assessment of \$50 to pay unless specifically exempted under the rules. Lawyers newly admitted by admission are exempt from the assessment during the year of their admission and the first year thereafter. Lawyers who have previously paid a fee of \$200 or more are exempt from the assessment. Lawyers who previously have paid \$200 or more in assessments will have a single assessment to pay if a single assessment is due depending on the status of their fee. Additional information regarding the required assessment is available in Rule 39.6(a) and in the annual reporting instructions issued by the Office of Professional Regulation.

This report consists of questions of the report, including the questions are not used in Step 2 of the process. If a question is not applicable to your situation, you must so indicate by selecting the "Not Applicable" response.

You have an obligation under Rule 39.18 to supplement your Combined Statement and Questionnaire with amended answers when there is any change in the information indicated on this report. Supplemental answers may be filed after admission to the Client Security Commission. They include changes of address which may be submitted using the "My Account Page for Lawyers" menu item on the My Account Page for Lawyers. Should you have any questions regarding the reporting process, do not hesitate to contact the staff at the office of the Client Security Commission.

If you do not practice law in Iowa and your present position does not require you to be eligible to practice law in Iowa, you may wish to apply for a Certificate of Exemption. You may apply for a certificate of exemption by clicking on the "My Account Page for Lawyers" and selecting the appropriate menu item.

FAILURE TO FILE THIS REPORT AND PAY THE REQUIRED FEE AND PENALTY CAN RESULT IN THE SUSPENSION OF YOUR RIGHT TO PRACTICE LAW IN IOWA.

Continue

You may designate an active Iowa lawyer in good standing, a law firm that includes Iowa attorneys in good standing, or a qualified lawyer servicing association. A qualified lawyer servicing association includes a bar association all of part of whose members are admitted to practice law in Iowa, a company authorized to sell lawyers professional liability insurance in Iowa, or an Iowa bank with trust powers issued by the Iowa Department of Banking. If you are a member of a law firm that includes other Iowa attorneys in good standing, you may designate your own firm to perform these duties.

25. I am engaged in the private practice of law in Iowa Yes / No

26. I designate the following named active Iowa attorney in good standing, qualified lawyer servicing association, or Iowa law firm that includes Iowa attorneys in good standing, as my representative or representatives under Iowa Court Rule 39.18:

- Name of Designated Attorney or Entity:
- Address Line 1:
- Address Line 2:
- Address Line 3:
- City:
- State:
- Zip Code: Zip Plus 4:
- Telephone Number:

27. My list of active clients can be found in the custody of the following named person at the location indicated:

- Name of Custodian:
- Telephone Number of Custodian:
- Location of Records
Address Line 1:
Address Line 2:
Address Line 3:
City:
- State:
- Zip Code: Zip Plus 4:

28. My electronic files and records can be found in the custody of the following named person at the location indicated:

- If the same person and location listed in response to question 27 serve as the custodian and location of your electronic files and records, click the toggle here and proceed to question 29:
- Name of Custodian:
- Telephone Number of Custodian:
- Location of Electronic Files and Records:
Address Line 1:
Address Line 2:
Address Line 3:
City:
- State:
- Zip Code: Zip Plus 4:



29. My paper files and records can be found in the custody of the following named person at the location indicated:

- If the same person and location listed in response to question 27 serve as the custodian and location of your paper files and records, click the toggle here and proceed to question 30:
- Name of Custodian:
- Telephone Number of Custodian:
- Location of Paper Files and Records:
Address Line 1:
Address Line 2:
Address Line 3:
City:
- State:
- Zip Code: Zip Plus 4:



30. The passwords and other security protocols required to access my electronic files and records can be found in the custody of the following named person at the location indicated:

- If the same person and location listed in response to question 27 serve as the custodian and location of your passwords and other security protocols, click the toggle here and proceed to question 31:
- Name of Custodian:
- Telephone Number of Custodian:
- Location of Passwords and Other Security Protocols:
Address Line 1:
Address Line 2:
Address Line 3:
City:
- State:
- Zip Code: Zip Plus 4:



31. Has your designated attorney or entity consented to the designation? Yes / No



The authority of the attorney or entity I have designated above takes effect upon my death or disability. The designated attorney or entity may apply to the chief judge of the judicial district in which the planning attorney practiced for an order confirming my death or disability. The authority contained in this designation is durable in the event of my disability.

I authorize the attorney or entity I have designated above to review client files, notify each client of my death or disability, and determine whether there is a need for other immediate action to protect the interests of my clients. I also authorize the attorney or entity designated above to serve as a successor signatory under Iowa Court Rule 45.11 for any client trust account I may have, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. I further authorize the attorney or entity designated under this rule to access my paper and electronic files and records as necessary to perform duties as a designated attorney, and to access passwords and other security protocols required to access those electronic files and records.

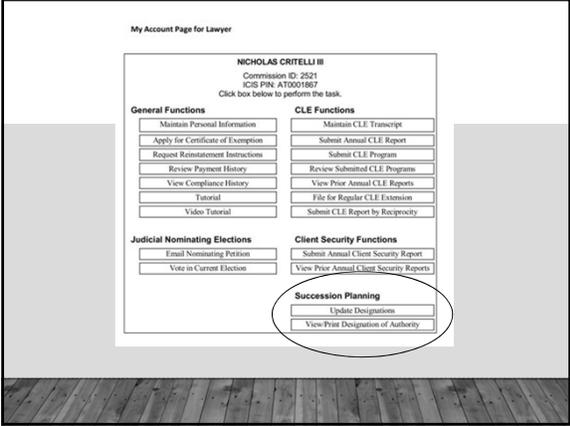
I certify that I have read and answered this statement/questionnaire completely and truthfully.



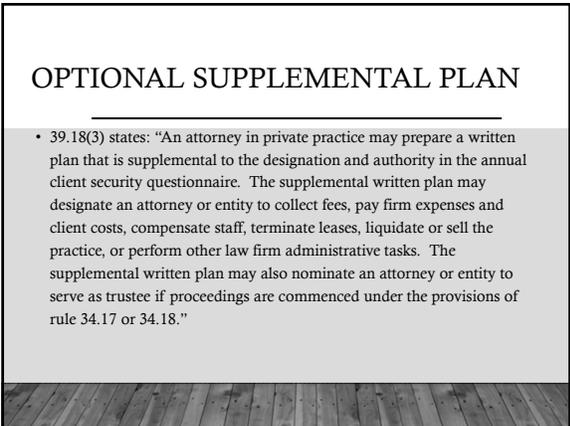
DUTY TO SUPPLEMENT

Anticipated Login Screen









WHY HAVE A SUPPLEMENTAL PLAN

- More specifically address when the designation becomes effective.
- Default powers granted designated attorney under the rule are limited.
- Delineate powers granted in the event of temporary vs permanent disability.
- Designated attorney may rely on the supplemental plan and could be used as evidence of the authority granted.
- Planning Attorney knows Designated Attorney is bound by the plan and vice versa.

DOCUMENTS TO CONSIDER IN CREATING A WRITTEN AGREEMENT

- Succession Plan Agreement with the Designated Attorney
- Limited Durable Power of Attorney
- Estate Planning Documents – provision in will or revocable trust authorizing and directing executor/trustee to act in accordance with the plan and designate authority as needed
- Consent Action – if the law practice operates as an LLC, professional corporation, or profession limited partnership

FORM DOCUMENTS

- Form Documents are available at the ISBA website.
- These sample plans are a starting point. Each attorney will need to tailor the succession plan agreement for their unique circumstances.

SUCCESSION PLAN AGREEMENT

- Issues to Consider:
 - Under what circumstances should the designated attorney take over and how is the determination made?
 - When and how should the practice be sold? Who makes the final decisions?
 - Conflicts of Interest – will the designated attorney be able to take over client matters? Buy the practice?
 - How should the real property be handled (separate from the practice)?
 - What steps do you need to take if the practice operates as an entity?

LIMITED DURABLE POWER OF ATTORNEY

- 39.18(4) states "A designation or plan under this rule must include language sufficient to make the designated attorney's or entity's powers durable in the event of the private practitioner's disability."
- You will need to consider many of the same issues as under the succession plan (when does the agent step in, who decides when there is an incapacity, etc.).
- If you are completing a succession plan agreement, you may want to reference it in the POA (and will need to be sure they work together).

ESTATE PLANNING DOCUMENTS

- Your estate planning documents should authorize and direct the executor/trustee to comply with your existing succession plan and to grant authority where appropriate to the designated attorney.
- You will need to think about who has final authority and how decisions will be made.

CONSENT ACTIONS FOR ENTITIES

- If your practice operated as business entity, you will need to take the appropriate steps to enter into the agreement and to designate the attorney who you want to manage the practice as an agent of the entity.