The Iowa State Bar Association
Mission and Vision
Adopted by the Board of Governors June 21, 2017

**Mission**
ISBA supports members and their service to clients, community, and the judicial system.

**Vision**
ISBA is a leading voice and trusted collaborator in helping its members serve their clients, the public, and the judicial system through engagement, advancements in law, innovation, and access to justice.

**Goals and Priorities**

**Goal #1: Supporting members in the practice of law**

**Priorities**

1. Engaging members with one another and the ISBA.
2. Promoting diversity among members and in the profession.
3. Providing members with resources and information to achieve professional success.
4. Assisting members with practice advice and career development.
5. Supporting members in their practice in law firms, in-house, governmental bodies, and otherwise.
6. Facilitating and advocating for legislation that produces clarity and stability to critical areas of statutory law.
7. Promoting the legal profession to students.
8. Promoting to the public the benefits of legal services provided by a lawyer over non-lawyers.

**Goal #2: Enhancing the ISBA as the premier resource for lawyers in Iowa**

**Priorities**

1. Promoting effective communication and engagement with members.
2. Enhancing and promoting good governance practices throughout the ISBA.
3. Enhancing criteria for developing, offering, and evaluating CLE programs, services, and other ISBA priorities.
4. Ensuring financial solvency and administrative efficiencies.

**Goal #3: Ensuring judicial system remains fair, impartial, and accessible to all**

**Priorities**

1. Advocating adequate funding for courts and legal services.
3. Fostering public respect and confidence in the judicial system and role of lawyers.
Succession Planning Guide
for Iowa Lawyers

The Iowa State Bar Association

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1 Advisory opinions and practice guidelines issued by The Iowa State Bar Association do not have the force of law and are not binding on the Iowa Supreme Court. Iowa law places sole responsibility for the regulation of the practice of law in the Supreme Court.
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Introduction

The demographics of Iowa’s private practitioner community suggest that death or disability of sole practitioners will be common in coming years. Iowa Court Rule 39.18, Iowa Court Rule 45.11 and Iowa Rule of Professional Conduct 32.1.3, comment 5 address these situations. This guide is intended to assist you as an Iowa practitioner in implementing these rules and in preparing your practice for maintenance, closure, or sale incident to your death or disability.

Aside from these rules, planning for the effect of your death or disability is practical for personal and professional reasons. Contingency plans for your extended absence may be a consideration in your professional liability insurer’s issuance of coverage. If you are temporarily disabled, preserving the viability of your practice pending resolution of the disability may be in your economic interest. If you are permanently disabled or deceased, planning may aid transfer of your practice to another attorney. In any event, prior planning may ease the burden on your 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. 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 your death or disability will demonstrate your professionalism and competence as a practitioner.

The primary focus of this guide is on planning by sole practitioners. Issues in practice succession occur less frequently in the case of attorneys practicing as a member or employee of a firm. However, a firm also may plan to ease transition of the practice when an attorney member or employee becomes disabled or dies. Iowa Court Rule 39.18 accordingly requires all private practitioners to make the same designations as sole practitioners.

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2 See Iowa R. Prof’l Conduct 32:1.17 (sale of practice may include goodwill).
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, 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).3

Iowa Court Rule 39.18 provides specific guidance regarding the duty to plan for death or disability. Rule 39.18 creates a mandatory first "tier" of succession planning that all attorneys in private practice in Iowa are required to complete as part of the annual Client Security report. The mandatory "first tier" focuses on tasks essential to protecting the interests of clients. The rule also allows an Iowa practitioner to adopt an optional "second tier" written plan, in which the practitioner may provide further guidance and authority, primarily for law firm management and administrative tasks.

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 triggering 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. An attorney or entity designated under rule 39.18 also is authorized to serve as a successor signatory under rule 45.11.

Iowa 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 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.

3 Advisory opinions and practice guidelines issued by The Iowa State Bar Association do not have the force of law and are not binding on the Iowa Supreme Court. Iowa law places sole responsibility for the regulation of the practice of law in the Supreme Court.
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 is 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.

Several rules suggest other obligations to clients upon disability or death:
- Iowa R. of Prof’l Conduct 32:1.5(e) (Division of Fees)
- Iowa R. of Prof’l Conduct 32:1.9(c)(2) (Confidentiality of Client Information)
- Iowa R. of Prof’l Conduct 32:1.16 (Declining or Terminating Representation)
- Iowa R. of Prof’l Conduct 32:1.17 (Sale of Law Practice)

Terminology

Rule 39.18 and the forms included in this guide use the terms designated attorney and planning attorney. To reduce confusion, the same terms are used in this guide. The term designated attorney refers to the attorney you designate under the provisions of rule 39.18 to administer your practice in the event of your death or disability. The term planning attorney refers to you, the attorney making the designation and whose practice is to be administered.

Death and Disability Practice Under Iowa Court Rule 39.18

The primary intent of Iowa Court Rule 39.18 is to protect the interests of clients. This intent forms the distinction between the two "tiers" of planning created by the rule. The first tier is mandatory, and second tier is optional.

The first tier provisions reduce your planning burden by requiring you to identify your designated attorney or entity during the annual Client Security reporting process. Your designated attorney or entity is authorized to perform a minimum set of duties to protect your clients upon your death or disability. The second tier provisions authorize, but do not require, an agreement with your designated attorney to perform additional administration of your practice upon your death or disability.
Mandatory First Tier Provisions

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. 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 rule requires all attorneys in private practice to maintain a current client list.

The designation also must identify where the planning attorney’s records are located, including the 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 the clients’ 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 designate his or her own firm. The actual questions 25 through 31 from the annual Client Security questionnaire are included with this guide at Appendix C.

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

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.

The designated attorney or entity is authorized to petition for appointment of a trustee under the provisions of rule 34.17(6) 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(6) 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.
Optional Second Tier Provisions

The second tier of succession planning is an optional but encouraged written plan that you as a planning attorney may create if desired. In the optional written plan, you 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 your practice.

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 your authorization and consent to their performance. Iowa Trust & Estates Counsel (ITEC) has prepared forms to implement the second tier provisions, included at Appendix E. 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 your will or revocable trust, directing the fiduciary for your estate or trust to engage your designated attorney to close or sell the practice in accordance with your 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 your professional corporation or professional limited liability company if you conduct your practice using one.

An annotated checklist for compliance with rule 39.18 is included in this guide at Appendix A.
Capacity of Your Designated Attorney: Counsel or Agent?

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

If the designated attorney acts solely as your agent, he or she could provide your clients notice of errors, just as you would have done had you been able.

Client Notification

Once you have made a designation under rule 39.18, you should provide notice to your clients that you have made a designation as required by the rule. The easiest way to do this is to include information regarding the designation requirement in your retainer agreements, engagement letters, and firm brochure. The notice should explain the requirement and nature of the designation and state that you have complied. The notice need not disclose the identity of your designated attorney or give clients an opportunity to consent or object.

Preparing Your Practice

Much of the confusion and expense involved in transition of your practice after your death or disability can be minimized by prior planning and disciplined conduct of your practice. Recommended tasks in organization and operation of your practice are included in the annotated checklist at Appendix A.

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4 Advisory opinions and practice guidelines issued by The Iowa State Bar Association do not have the force of law and are not binding on the Iowa Supreme Court. Iowa law places sole responsibility for the regulation of the practice of law in the Supreme Court.
Handling Client Files

One of the most troublesome issues incident to death or permanent disability of a practicing attorney is the disposition of client files. Proper handling of these files may consume substantial time and expense on the part of your designated attorney absent preparation by you as 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. Subject to narrow exceptions, the client owns the entire file, including attorney work product.

Unless you have addressed disposition of client files in your engagement letters, fee contracts, or termination letters, it will not be permissible for your 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. Your 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, your designated attorney would be authorized to destroy the remaining contents of the file if the normal file retention period has passed.

You can minimize the burden of file disposition upon termination of your practice by adopting appropriate procedures in your daily practice. These procedures are described in detail in The Iowa State Bar Association Client File Retention Guide, included with this guide as Appendix F.

Preparing Your Personal Affairs

You will want to maintain a current will, designating a personal representative and alternates, so that probate of your estate can be opened and a personal representative can be appointed quickly upon your 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. 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. You should consider instructing your personal representative to engage your designated attorney for that purpose, with the appointment order or engagement incorporating provisions of your succession plan agreement. The forms prepared by ITEC adopt this approach.

5 Iowa Supreme Court Attorney Disciplinary Rd. v. Gottschalk, 729 N.W.2d 812 (Iowa 2007); Restatement (Third) of the Law Governing Lawyers §46(2) (2000).

6 Gottschalk, 729 N.W.2d at 819-820.

7 Iowa Code §§ 633.84, 633.350.
As planning attorney, you should consider the likely cash flow situation of your practice upon your disability or death. If the remainder of your property (other than the practice) is likely to pass to your spouse or other family members, your practice might be placed in a cash-poor situation, especially if your accounts receivable are not amenable to rapid billing and collection. Cash flow needs of the practice for routine expenses and compensation of staff likely will continue for some period after your death or disability. You may want to consider practice interruption insurance, disability insurance, and a specific policy of insurance on your life as sources for interim capital to wind up your practice in the event of disability or death.

Entering into a law practice succession plan agreement with your designated attorney may indirectly assist with the issue of compensation. If your designated attorney will have the opportunity to become successor counsel for those clients who consent after notice, he or she may be willing to serve with no or reduced compensation.

The focus of this outline is on planning by sole practitioners. Issues in practice administration appear to occur less frequently with respect to attorneys who practice 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. 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.

The law firm organizational document is an appropriate place to include provisions relating to the death or disability of attorney members 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 included in the checklist at Appendix A.

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 maintain some level of familiarity with the matters assigned to another attorney or other attorneys in the group.
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- Paragraph for Inclusion in Retainer Agreement
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- Law Practice Succession Plan Agreement

Appendix F – The Iowa State Bar Association Client File Retention Guide
Much of the confusion and expense involved in transition of your practice upon your death or disability can be minimized through prior planning and disciplined conduct of your practice. Your ability to engage a designated attorney also may be aided by organization and discipline of your practice. The following checklist includes recommended tasks with annotations. The checklist is divided into actions associated with the mandatory first tier duties under rule 39.18, and actions associated with the optional second tier provisions of rule 39.18. This checklist is written from the vantage point of the planning attorney, to whom the terms you and yours refer.

**First Tier Actions**

- **Implement a file retention and storage policy.**
  
  Avoid keeping original client documents (e.g., wills, abstracts) in client files. Consolidate and index your holdings of these documents or better yet, return them to clients.

  Periodically purge old files after proper notice to your clients and passage of the minimum retention period prescribed in your retention and storage policy. The Iowa State Bar Association Client File Retention Guide included with this guide as Appendix F provides detailed guidance on file retention and storage policy.

- **Provide notice of your file retention and storage policy to current and future clients.**
  
  The Iowa State Bar Association Client File and Retention Guide at Appendix F includes sample provisions for notice to clients at the beginning of the representation and again at conclusion of the representation.

- **Use retainer agreements and engagement letters that disclose your compliance with the requirement to designate an attorney to close your practice in the event of your death, disability, impairment, or incapacity.**
  
  Arguably the requirement to designate an attorney under rule 39.18 falls within the exception for disclosures permitted or required by the ethics rules, so that written, informed consent by clients to an attorney designation under rule 39.18 is not required. Nonetheless, disclosure of the existence of the designation in engagement letters and retainer agreements would be prudent. Sample provisions for a retainer agreement and engagement letter are contained in Appendix E of this guide.
Select 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 your designated attorney or entity. If you restrict your practice to a particular field or fields of practice, it may be helpful to designate an attorney or entity that practices in the same field or fields.

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.

If your bank possesses trust powers issued by the Iowa Division of Banking, it may be willing to serve as your designated entity.

The Iowa State Bar Association (ISBA) is a qualified attorney-servicing association. For an annual fee, attorneys may enter into a succession plan agreement with ISBA which provides for performance of first tier duties. The ISBA does not perform second tier duties, and retains the option to refer or outsource performance of first tier duties under its succession plan agreements.

The ease with which you are able to locate an attorney or entity to serve may vary directly with the organization and discipline of your practice.

File or update your report to the Client Security Commission to show your designation under rule 39.18 and the other information requested by questions 25 through 31 of the Client Security questionnaire.

Besides identifying the designated attorney as part of the mandatory first tier requirements, you also are required to specify the custodian and location of your 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 you have actual physical possession of these materials. The intent is that some person other than you should be knowledgeable regarding the location of these materials and be able to help your designated attorney gain access to them.

Examples: The "custodian" for this purpose need not be an attorney. The custodian might be a law staff member or a family member who knows where the materials are located and has a key to your office. If you have briefed your 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 you have briefed the designated attorney on the location of the materials but no person other you has a key to the office, the custodian might be the office landlord who has a key to the office.

You are required to update your designation under rule 39.18 and responses to question 25 through 31 annually as part of your report to the Client Security Commission. Iowa Court Rule 39.8(1) also requires you to file a supplemental statement of any change in information previously submitted, within 30 days of the change. Your attorney account page on the (Office of Professional Regulation) OPR web site includes a menu item entitled “Update Designations” under the heading “Succession Planning” for this purpose.

8 http://www.iacourtcommissions.org
Print out a designation form from your attorney account page at the OPR web site, execute it before a notary, and provide the executed form to your designated attorney.

Your designated attorney will need the executed designation form to establish his or her authority to administer your practice. Your attorney account page on the OPR web site includes a menu item entitled “View/Print Designation of Authority” under the heading “Succession Planning” for this purpose.

Familiarize your designated attorney or entity with your office procedures and system.

Consider providing your designated attorney or entity a tour of your office, with introductions to staff, and familiarization with your office systems including where to locate and how to use your client list, files, and other paper and electronic records.

Brief your law office staff regarding the existence and purpose of the designation.

Make certain your staff members know where the written agreement is kept and how to contact your designated attorney and your successor trust account signatory if an emergency occurs before or after office hours.

Brief your staff also on how they should assist the designated attorney or entity with access to the client list, files, and other paper and electronic records. 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.

If you practice without regular staff, make sure your designated attorney and successor signatory know whom to contact (the landlord, for example) to gain access to the office.

Inform your spouse or closest living relative and your personal representative of your designation and how to contact the designated attorney and successor signatory.

Prepare a law office list of contacts. Make sure your designated attorney has a copy.
Have an up-to-date office procedure manual that includes information on:

- How to check for a conflict of interest.
- How to use the calendaring system.
- How to generate a list of active client files, including client names, addresses, and phone numbers.
- Where client ledgers are kept.
- How the open/active files are organized.
- How the closed files are organized and assigned numbers.
- Where the closed files are kept and how to access them.
- The office policy on keeping original client documents.
- Where original client documents are kept.
- Where the safe deposit box is located and how to access it.
- The bank name, address, account signers, and account numbers for all law office bank accounts.
- The location of all law office bank account records (trust and operating).
- Where to find, or who knows about, the computer user names and passwords.
- How to access your voice mail (or answering machine) and the access code numbers.
- Where the post office or other mail service box is located and how to access it.

Conduct an orderly and disciplined practice.

Make sure all your file deadlines (including follow-up deadlines) are calendared. Document your client files. Keep your time and billing and trust account records up-to-date.

Consult with officials at the bank where your trust account is located to ascertain if your designation under rule 39.18 and the provisions of the rule will be accepted as sufficient authority to administer your trust account as your successor signatory.

You may find it necessary to prepare a separate, successor signatory document under rule 45.11 to satisfy your bank, or the bank may require you and your successor signatory to sign its own bank forms providing contingent access to your trust account and setting the conditions under which the authorization will become effective.

The benefit of providing successor trust account signatory authority to someone is the expeditious service it can provide clients. If you are unable to continue in practice, a successor signatory will be able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. If a successor signatory is not arranged, client funds will need to stay in the trust account until a court order allows access. A trusteeship under Iowa Court Rules 34.17(6) or 34.18 may be necessary to provide this authority. This delay may leave your clients at a disadvantage, because your clients may need funds held in your trust account to hire a new attorney.
Provide a copy of your successor signatory documentation under rule 45.11 or as required by your bank to your designated attorney or other successor signatory.

If you are an Iowa Title Guaranty (“ITG”) participant, notify ITG of the designated attorney who will assume responsibility for your ITG files.

NOTE: To assume your ITG files, your designated attorney must be an ITG participating attorney approved to provide each of the ITG services that your designated attorney will need to assume on your behalf. For example, if you issue closing protection letters, your designated attorney must also be approved to issue closing protection letters. If your designated attorney is not a participating ITG attorney, his or her role may be limited to remitting monies associated with completed ITG files to ITG as appropriate and transferring outstanding ITG files and associated monies to an ITG participating attorney for completion. The best practice may be to select an ITG participating attorney as your designated attorney and enter into a written agreement and power of attorney under the second tier provisions of rule 39.18.

Familiarize your designated attorney with any unique aspects of your real estate practice, including, but not limited to: (1) processes for handling requests for title opinions, commitments, closing protection letters, and certificates; (2) contact information for lenders, closers, realtors, and/or abstractors, as applicable; (3) abstract handling processes; and (4) file systems for title opinions, commitments, closing protection letters, and certificates.

Direct your designated attorney and staff to immediately notify ITG of your death or disability. Instruct your staff to work with ITG and your designated attorney to transfer all outstanding commitments and unissued certificates to your designated attorney or to another attorney who is an ITG participating attorney, as applicable. Also direct your designated attorney and staff to remit all outstanding premiums to ITG in a prompt manner.

Direct your designated attorney to ensure your executor, administrator, conservator or legal guardian, as applicable, immediately obtains and provides ITG with evidence of “tail insurance”, either as part of your professional liability insurance policy, or as a rider thereto. “Tail insurance” is additional coverage that extends the professional liability insurance policy’s claims reporting period. ITG requires three years of tail insurance coverage after a participant becomes inactive.
Forward the name, address, and phone number of your designated attorney to your professional liability insurance carrier each year.

This will enable your carrier to locate your designated attorney in the event of your death, disability, impairment, or incapacity.

Create a When I Die file directory or folder to place notes, memos, letters or other materials you would want to have if you were serving as your designated attorney.

Annually review your written agreement, power of attorney, and successor trust account signatory documents with your designated attorney and successor signatory.

Second Tier Actions

Have a written agreement with your designated attorney and a power of attorney that describe their second tier responsibilities in closing your practice.

A sample written agreement and a sample power of attorney are included at Appendix E of this guide. Documents prepared to implement a second tier relationship are not filed with OPR.

If your written agreement authorizes your designated attorney to sign operating account checks, consult with officials at the bank where your operating account is located to determine what documents the bank will require to provide authority.

You and your designated attorney likely will need to sign bank forms authorizing the designated attorney to have access to your operating account and setting the conditions under which the authorization will become effective.

Update your personal estate planning documents to address closure and sale of your practice.

Sample provisions for your will or revocable trust are included at Appendix E of this guide. These provisions direct the fiduciary for your estate or trust to engage your designated attorney to close or sell your practice in accordance with the succession plan agreement.
The duties of an attorney designated under the "first tier" provisions of rule 39.18 are limited to basic protection of client interests. Rule 39.18 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. This checklist is written from the vantage point of the designated attorney, to whom the terms you and yours refer.

☐ Confirm the death or disability of the planning attorney.
   If there is any doubt regarding the existence of conditions triggering actions under the designation, you 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.

☐ Immediately notify the Office of Professional Regulation (OPR) of the death or disability of the planning attorney and your assumption of duties as the designated attorney.
   The director and assistant directors at OPR can provide advice regarding performance of your duties and helpful information regarding the planning attorney’s practice, such as custodian information and open case listings for all counties.

☐ 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 attorney account page, execute it before a notary, and provide the executed form to you as the designated attorney. A sample of the designation form is included with this guide at Appendix D. You will need the executed designation form to establish your authority to administer the practice, and in particular the trust account. If the designation form executed by the planning attorney is not otherwise available to you, OPR can print out and provide you a similar designation form, executed by the director or assistant director of OPR based on the official records at OPR.
Access and secure the files and records.

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.

Locate and secure all unopened mail and all mail that has not been filed. Match all unfiled mail to the appropriate files.

As part of the annual Client Security questionnaire, 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 you 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 you of that information at the time of your initial designation.

Assess the situation.

Once you have assumed duties, you 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 you can be properly compensated without court supervision and assistance. If court supervision and assistance seem necessary, an application for appointment of a trustee may be filed. As a designated attorney performing only tier one duties, you 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(6) or 34.18. If you have undertaken tier two duties under a succession agreement, conflicts of interest may preclude appointment of you as a trustee.

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 you will be directly compensated for your time and expenses by the planning attorney or his or her estate. If there is doubt regarding compensation by the planning attorney, a trustee appointment will make reimbursement by the Client Security Commission possible.

If the planning attorney was a sole practitioner, consider arranging to have the planning attorney's office telephone number forwarded to a number answered by your office during the period of your duties and for a few months thereafter.
Provide notice to the planning attorney's clients and other interested persons.

Check the planning attorney’s calendar and active files to identify matters that are urgent or that have pending trials, hearings or other matters scheduled. Contact the clerks of court or court administrators for those counties where the planning attorney practiced to request lists of open cases in which the planning attorney has appeared. Contact OPR to request a consolidated list of matters the planning attorney has pending in any Iowa county from the Judicial Branch Information Technology Department.

Identify imminent deadlines and provide specific notice to clients regarding these deadlines. Contact the chief judge of each judicial district where imminent deadlines exist and recommend entry of a blanket order extending or rescheduling those matters.

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.11

Set a date to confirm that all pending matters show an appearance by successor counsel or at least approved withdrawal of the planning attorney.

Contact the attorney for the Business Services Division of the Iowa Secretary of State’s office to request a list of corporations for which the planning attorney is listed as registered agent. Provide notice of the planning attorney’s death, suspension, or disability to officers of each corporation and recommend they file a new designation of registered agent with the Secretary of State.

Provide notice to the planning attorney’s professional liability insurance carrier.

Protect the confidences of clients.

Once your duties as designated attorney are triggered, you will want to examine the planning attorney’s client list for potential conflicts with your own client list before accessing any of the planning attorney's client files.

Throughout your service as designated attorney, you must be alert for conflicts of interest with your own practice and address them as contemplated in rule 39.18(5). You should avoid examining any documents or acquiring information creating a conflict with the designated attorney's clients. If you inadvertently acquire such information, rule 39.18(5) calls for prompt recusal or refusal of employment to protect the interests of the planning attorney's clients.

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11 See Iowa R. Prof’l Conduct 32:1.16(d) (duties to clients upon termination of representation).
Immediately notify Iowa Title Guaranty (ITG) of the death or disability of the planning attorney and the date the death or disability occurred. Coordinate with ITG regarding the process for completing ITG files and accounting for monies associated with ITG files.

If you are an ITG participating attorney and have a written agreement with the planning attorney under the second tier of rule 39.18, the notification of ITG should include an acknowledgement that you are accepting all outstanding commitments and unissued certificates of the planning attorney and a statement that all lenders and owners will be notified of your assumption of their file(s) within a reasonable time. Work with the planning attorney’s staff, if applicable, to ensure that all outstanding premiums related to transactions by the planning attorney are remitted to ITG in a prompt manner. Work with the planning attorney’s staff and ITG to transfer each file issued in the planning attorney’s name that remains outstanding to you for completion and remitting the premium, if unpaid.

If you are not an ITG participating attorney or if you are only performing trustee duties or first tier duties, your role may be limited to remitting monies associated with completed ITG files to ITG as appropriate and transferring outstanding ITG files and associated monies to an ITG participating attorney for completion.12

Distribute files to active clients.

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, district court administrator, or Judicial Branch Information Technology Department 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 destruction of files eligible for immediate destruction, long-term storage of files not eligible for immediate destruction, and the retention period and ultimate destruction for retained files.13

If any files will be placed in long-term storage, advise each client where their file will be stored and how to go about retrieving it. Also advise OPR where any retained files will be stored.

12 Appointment of you as a trustee under rule 34.17(6) or rule 34.18 may preclude you from assuming responsibility for completing ITG files. If appointed as a trustee, you may need to coordinate with ITG on transfer of outstanding files to another ITG participating attorney. See Iowa Ct. R. 34.17(6), 34.18 (trustee must not serve as an attorney for clients of the suspended or deceased attorney).

13 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 then return all monies to the rightful owners.\(^{14}\) The Client Security Commission should be contacted if the condition or complexity of the accounting records exceeds your capabilities, especially if there may be shortages in the account. You should be cautious about returning trust account monies to clients before the account is completely reconciled.

If the trust account balance is not sufficient to reimburse all parties for whom trust account balances should exist, it may be necessary 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, one approach 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. Claim forms are available from the Client Security Commission.

Once the trust account has been fully administered and closed, notify the Client Security Commission of the closure so that OPR can update the records of the Lawyer Trust Account Commission.

\(^{14}\) See Iowa R. Prof’l Conduct 32:1.15(d), Iowa Court Rule 45.2(2) (prompt accounting and return of funds or property to clients or third persons are entitled to receive).
APPENDIX C
Client Security Questionnaire Questions Based on Rule 39.18

25. Are you engaged in the private practice of law in Iowa?  Yes _____  No _____

26. If you answered "Yes" to question #25, indicate below the active Iowa attorney in good standing, qualified lawyer servicing association, or Iowa law firm that includes Iowa attorneys in good standing, you have designated as your representative or representatives under Iowa Court Rule 39.18.

   Name of Designated Attorney or Entity: __________________________________________________
   Address 1: __________________________________________________
   Address 2: __________________________________________________
   Address 3: __________________________________________________
   City: __________________________________________________
   State: _____________________
   Zip: _____________________
   Zip Plus 4: _____________________
   Telephone Number: ____________________________________
   Email: _______________________________________________

27. If you answered "Yes" to question #25, identify the name of the custodian for your list of active clients, and the contact information for that custodian:

   Name of Custodian: __________________________________________________
   Address 1: __________________________________________________
   Address 2: __________________________________________________
   Address 3: __________________________________________________
   City: __________________________________________________
   State: _____________________
   Zip: _____________________
   Zip Plus 4: _____________________
   Telephone Number: ____________________________________
   Email: _______________________________________________
28. If you answered "Yes" to question #25, identify the name of the custodian for your electronic file and records, and the contact information for that custodian:

Name of Custodian: ________________________________________________________
Address 1: ________________________________________________________________
Address 2: ________________________________________________________________
Address 3: ________________________________________________________________
City: _____________________________________________________________________
State: _____________________
Zip: _____________________
Zip Plus 4: _____________________
Telephone Number: ____________________________________
Email: _______________________________________________

29. If you answered "Yes" to question #25, identify the name of the custodian for your paper files and records, and the contact information for that custodian:

Name of Custodian: ________________________________________________________
Address 1: ________________________________________________________________
Address 2: ________________________________________________________________
Address 3: ________________________________________________________________
City: _____________________________________________________________________
State: _____________________
Zip: _____________________
Zip Plus 4: _____________________
Telephone Number: ____________________________________
Email: _______________________________________________

30. If you answered "Yes" to question #25, identify the name of the custodian for your passwords and other security protocols required to access your electronic files and records, and the contact.

31. If you answered "Yes" to question #25, has the attorney or entity you listed in question #26 consented to the designation?

Yes _____ No _____ Not Applicable _____

If no or not applicable, attach explanation.
Designation of Successor Attorney

I hereby state that:

In accordance with Iowa Court Rule 39.18, each attorney engaged in the private practice of law in the state of Iowa must identify and authorize on an annual basis a designated successor to serve as the attorney's designated representative or representatives in the event of the attorney's death or disability. This designation is a requirement of the Iowa Supreme Court.

I hereby designate the following attorney or entity to serve as my successor attorney under Rule 39.18:

They shall have all of the powers set forth in this document, Rule 39.18, Rule 45.11, and in any supplemental plan entered into pursuant to Rule 39.18(3).

The attorney or entity designated above is authorized to review my client files, notify my clients of my death or disability, and determine whether there is a need for other immediate action to protect the interests of my clients.

The attorney or entity designated above is also authorized to serve as my successor signatory for any client trust accounts I maintain, may prepare final trust accountings for my clients, make disbursements from my client trust account(s), properly dispose of my inactive client files, and arrange for storage of my client files and trust account records.

This designation shall become effective only in the event of my death or incapacity.

I have executed this designation of successor attorney on _____________________, 20___

Signature of Current Account Signatory   Name (Please Print)

STATE OF IOWA, COUNTY OF

On this__________ day of __________________________, __________________________, before me, a Notary Public, personally appeared ____________________________ to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

Notary Public       (Seal, if any)

Print Name: ____________________________  My commission expires: ______________
Paragraph for Inclusion in Retainer Agreement
(Sample - Modify as Appropriate)
Attorney may designate another attorney to assist with the closure of Attorney's law office in the event of Attorney’s death, disability, impairment, or incapacity. In such event, Attorney’s office staff or the designated attorney will contact you and provide information about how to proceed.

Paragraph for Inclusion in Engagement Letter
(Sample - Modify as Appropriate)
I also want to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. To accomplish this, I have designated another attorney to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the designated attorney will contact you and provide you with information about how to proceed.

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.
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 Director and SOLE Shareholder 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's/Manager’s death 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/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:

______________________________
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:

a) 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;

b) 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; or

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

c) 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.

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 the 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 written notice to such Agent. 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.

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

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 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.16

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.

16 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.
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: _____________________
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.
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.
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, then 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 supplemental succession plan form 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 some tailoring to the specific facts and circumstances for each Planning Attorney that uses 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 _____________________, ____________________ (the “Law Practice”); 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 exists 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 into 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 15.

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; or

   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.

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.

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17 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.¹⁸

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.]¹⁹

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.

¹⁸ Given the temporary nature of the disability, you may want to consider limiting the Designee’s ability to make hiring/firing decisions.

¹⁹ Attorneys may want to consider whether or not to authorize the Designee to transfer files to himself/herself.
5. Death or Permanent Disability. 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, ____________________________.21

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.]22

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.

20 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.

21 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.

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

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. [To be included only if Planning Attorney owns real property in own name associated with the Law Practice] **Spousal Consent of Planning Attorney.** Attached as *Exhibit C,* Planning Attorney’s Spouse has consented and agrees to be bound by to this Agreement (as it may be Amended by the Parties), and Planning Attorney’s Spouse agrees to sign any deed to transfer real property in the event of any sale of the Law Practice.

15. **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 written notice to the Parties to this Agreement.

   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.

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

17. Representations.

a. Designee represents and warrants that Designee is either a qualified attorney-serving 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 17 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-serving 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 17 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.

18. 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.23

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23 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.
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.
IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

___________________________________    ___________________
[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: ________________

___________________________________    ___________________
[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: ________________
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.
Exhibit A
Durable Power of Attorney
Exhibit B
[insert Consent Action if applicable]

Exhibit C
[insert Spousal Consent if applicable]
APPENDIX F
Client File Retention Guide²⁴

At some point, most lawyers face the question of “What do I do with client files that are closed and dormant?” How long should the lawyer retain a client file? What documents in the file are required to be maintained by the lawyer? Which contents of the file belong to the client? Can the contents of the file be electronically scanned and then destroyed? What do the Iowa Rules of Professional Conduct require?

Lawyers are required to comply with a number of ethical and legal obligations related to client files and property. Applicable Iowa Rules of Professional Conduct include:

Prof.Cond.R. 32:1.1
A lawyer shall provide competent representation.

Prof.Cond.R. 32:1.6
A lawyer shall not reveal information relating to representation of a client.

Prof.Cond.R. 32:1.3
A lawyer shall act with reasonable diligence and promptness.

Prof.Cond.R. 32:1.15
A lawyer shall safeguard the property of the client.

Prof.Cond.R. 32:1.4
A lawyer shall keep the client reasonably informed and promptly comply with all of a client’s reasonable requests for information.

Prof.Cond.R. 32:1.16(d)
A lawyer shall, upon termination of representation, take reasonable steps to protect a client’s interest including surrendering paper and property to which the client is entitled.

CONFIDENTIALITY OF FILES
What must be kept confidential?

Maintaining the confidentiality of client files is a duty imposed upon lawyers by Prof.Cond.R. 32:1.6. An important step toward complying with this duty is the maintenance of a paper or digital filing system with access limited only to authorized personnel.²⁵ Equally important, a lawyer must use “reasonable efforts to prevent the inadvertent or unauthorized disclosure” or access to a client’s file regardless of whether it is maintained in paper or digital format.²⁶

²⁴ Advisory opinions and practice guidelines issued by The Iowa State Bar Association do not have the force of law and are not binding on the Iowa Supreme Court, as Iowa law places sole responsibility for the regulation of the practice of law in the supreme court. The Iowa State Bar Association is grateful to the Ohio Board of Professional Conduct for permission to base this Client File Retention Guide in large part on the Ethics Guide on Client File Retention prepared by the Ohio Board of Professional Conduct.

²⁵ See Restatement (Third) of The Law Governing Lawyers, Sec.46

²⁶ Prof.Cond.R. 32:1.6, comment [18]. “Reasonable” when used in relation to conduct by a lawyer means conduct of a reasonably prudent and competent lawyer. Prof.Cond.R. 32:1.0(h).
The Iowa Rules of Professional Conduct do not prescribe a minimum period of time for the retention of client files, nor is a lawyer required to permanently preserve all files of current or former clients. The Iowa State Bar Association’s Committee on Ethics and Practice Guidelines has suggested a retention period of not less than 6 years after the rendering of last legal service if a written file destruction policy is in place or 10 years without a written policy. It is nearly impossible to establish a minimum retention period for client files that applies in all circumstances. The decision of how long to maintain a client file always lies within the professional judgment of the lawyer, and may be influenced by the nature and subject matter of the representation, relevant statutes of limitations, and potential malpractice issues.

However, lawyers should always be mindful of one time period for document retention required by the Iowa Rules of Professional Conduct:

IOLTA/trust account records shall be kept by lawyer for six years after termination of representation (Prof.Cond.R. 32:1.15).

Despite the lack of minimum file retention requirements in Iowa, other jurisdictions suggest client file retention periods that run concurrently with IOLTA/trust account recordkeeping requirements. In these situations, a lawyer maintains both required trust account and financial records and the underlying client file for the entire IOLTA retention period, i.e. six years.

Although maintaining client files for the duration of the IOLTA retention period may be appropriate in many cases, certain client matters may require a longer or possibly an indefinite period of retention. For example, certain files related to minors, probate matters, estate planning, tax, criminal law, corporate formation, business entities, and transactional matters should be retained until the files no longer serve a useful purpose to the current of former client. Consequently, a careful and particularized review of each client file, and the establishment of a specific file retention period for the file, may be necessary with regard to some matters.

A retention period for the client file should take into consideration the statute of limitations to bring claims against the lawyer or any retention period required by the lawyer’s malpractice carrier.

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28 See also Client File Retention Policy, page 3.
What are Client Papers and Property? Who owns the Client’s File?

The Iowa Rules of Professional Conduct provide that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client’s interest, 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 expenses that has not been earned or incurred.\(^{29}\) While Iowa’s rules do not define client papers and property, client papers and property may include correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client’s representation.\(^{30}\)

The Iowa Supreme Court has adopted the “entire file” approach for determining who owns the documents within a client’s file. As a result, a client is entitled to all materials possessed by the lawyer in the client file, but with a few narrow exceptions, which include:

1. Items that are properly refused to be disclosed for a client’s own benefit unless a tribunal has required disclosure.\(^{31}\)
2. Certain law firm documents reasonably intended only for internal review, such as assignment of personnel to case, withdrawal because of client’s misconduct, or the firm’s possible malpractice liability to the client.\(^{32}\)

The Iowa Rules of Professional Conduct do provide in a comment that a lawyer may retain papers as security for a fee to the extent permitted by Iowa Code section 602.10116 or other law.\(^{33}\) Still, the ISBA Committee on Ethics and Practice Guidelines has opined that a lawyer may not assert a statutory retaining lien against a client’s original documents if, by doing so, the client would be otherwise prejudiced.\(^{34}\)

Client File Retention Policy

A lawyer should adopt and consistently follow a written client file retention policy. Such a policy should meet the needs of the lawyer’s practice and comply with the Iowa Rules of Professional Conduct. A retention policy should include the step-by-step details necessary for the lawyer to (1) close and store the client file, (2) transfer the file to the client, a third party, or subsequent lawyers, and (3) eventually destroy the file. The policy also should address document review processes and procedures, IOLTA records, backup and archival procedures of digital and paper documents, the designation and duties of a firm’s client file custodian, and the creation of a destroyed client file register.

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\(^{29}\) Prof.Cond.R. 32:1.16(d)

\(^{30}\) See supra n.3 for definition of “reasonable.”


\(^{33}\) See Prof.Cond.R. 32:1.16, Comment [9].

In developing a retention policy, a lawyer should consider the nature of his or her practice and the types of client materials that come into his or her possession. A different retention period may be required for each area of the lawyers’ practice. For example, a corporate practice may require the retention of certain closed files for the life of the corporation; a collections practice may require a retention period until a judgment can no longer be revived; and a practice that includes cases involving minors may require retention beyond the age of majority. The separate retention period established for each practice area or matter type should be described in the firm’s retention policy.

Even if the lawyer concentrates his or her practice in a single area of the law, the retention policy may need to distinguish between different case types within that area of practice. For example, a lawyer practicing domestic relations law would likely need to establish a longer file retention period for divorce cases involving minor children compared to the dissolution of a marriage with no children.

Notice to Clients

At the beginning of the representation, the lawyer should notify the client, in writing, of the general provisions of the firm’s file retention policy. This is best accomplished through a statement in the initial engagement letter or fee agreement explaining when the file will be returned to the client. It is also acceptable and strongly advised that the lawyer provide the client with copies of correspondence, pleadings, deposition transcripts, and expert reports during the representation to keep the client reasonably informed as well as to comply with requests for information as required by Prof.Cond.R. 32:1.4(a) (3)-(4). The release of materials to the client during representation does not relieve the lawyer of obligations to maintain a complete client file or to turn over documents upon request.

The following is a sample statement in an initial engagement letter, regarding the final disposition of the client’s file:

*It is the policy of the firm that we will keep and store your file for _____ years after the date of the last legal service as evidenced by the date of the letter closing the file. Thereafter, the file and all of its contents will be permanently destroyed without further notice to you. You may retrieve your file and all of its contents at any time during that period.*

The closing letter at the conclusion of representation should include a recitation of the firm’s file retention policy and the date when the file will be destroyed. The letter should allow the client a reasonable period of time to request a copy of his or her file before it is destroyed.

The file closing letter may contain language similar to the following:

*Under the firm’s file retention and destruction policy, your file will be kept for ___ months/years from the above date after which time the file will be permanently destroyed. You may retrieve your file and its contents at any time prior to the date of destruction.*

36 Id.
A file retention policy, explained in both the initial engagement and file closing letters, give the client sufficient notice of the length of time the file will be retained and that it may not be kept indefinitely by the lawyer. As indicated above, a retention period for the client file should take into consideration the statute of limitations to bring claims against the lawyer or any retention period required by the lawyer’s malpractice carrier. Special attention should also be given to the discovery rule and its application to legal malpractice matters when establishing a file retention policy. In addition, a policy should address suspension of destruction of any records that are relevant to any threatened or existing action, including malpractice matters.

A retention policy may still be adopted even after lawyer has been in practice for a significant period of time. When implementing a policy after accumulating files for years or even decades, the lawyer should set a date for implementation and draft a letter to current and former clients detailing the retention policy, dates for file destruction, and the time period the client may request and obtain their file.

**Closing and Transmittal of the Client File**

A lawyer is required to take reasonable steps to protect the client’s interest when a client file is closed at the end of representation. This duty applies regardless of the reason for the termination of the representation.

**A lawyer should take certain steps when closing a client file:**

1. Determine that the matter has concluded (e.g., file contains a dismissal entry, satisfaction of judgment, lease termination, etc.) and inventory the file determine its contents;

2. Determine which documents the client is entitled to receive;

3. Determine whether the file contains other client property, such as, (a) items provided by the client or (b) original documents: wills, powers of attorney, advance healthcare directives, other executed estate planning documents, cash, bonds, negotiable instruments, deeds, official corporate or other business and financial records, and settlement agreements produced during the representation;

4. Determine which of the identified items can or should be returned to the client for their safekeeping. If you make the determination that you should retain some of the items provided by the client or original documents, identify the item or document and its location on a separate list; and

5. Cull, at the lawyer’s discretion, publicly available documents such as pleadings and briefs, hard copies of transcripts available digitally, and work product (e.g. internal firm correspondence, drafts of documents, and lawyer’s notes).

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37 Prof.Cond.R. 32:1.16(d)
When the client file is transferred to the client, a letter listing the general contents of the file should be prepared with a receipt to be signed by the client. Alternatively, a copy of the file might be retained by the lawyer. Clients should be encouraged to pick up the file from the lawyer’s office whenever possible. A lawyer should maintain a copy of the signed receipt with his or her copy of the client file. Files mailed at the client’s direction should be sent by certified mail. If the client directs the lawyer to send the file to a third party or another lawyer, the request should be made in writing with a signed release to transfer the file. If the location of the client is generally unknown, it is advisable to withhold all original documents or client papers for transmittal until the client’s address is confirmed or the client contact the lawyer. A lawyer should not charge the client for providing the file or making copies of the file.

Charging a client a separate fee to store his or her file during any retention period is discouraged unless the expense is reasonable and agreed upon in writing.

Destruction of Retained Files

A file may be destroyed at any time with the client’s consent. However, it is the best practice for a lawyer to retain either a paper or digital copy of the file for the duration of the firm’s file retention period. Even if the client previously has been advised of the file retention period, it is the best practice to send a final file destruction notice to the client before any client files are destroyed.

The file destruction notice should be sent to the last known address of the client. A lawyer is required to take reasonable steps, but not extraordinary measures, to locate missing clients. For example, contacting known family members, placing a notice in a newspaper of general circulation, or a search of commonly used electronic databases, social media, or the internet are considered reasonable efforts undertaken to locate the client.

Lawyers are not required to send a file destruction notice by certified mail, but unique circumstances may warrant the use of this method. For example, the use of certified mail may be prudent when a client has made contact with the firm requesting to pick up a copy of the file prior to its destruction but has failed to do so after a reasonable period of time.

38 See, e.g., Iowa Supreme Court Att’y Discip. Bd. v. Gottschalk, 729 N.W. 2d at 819-820; Prof.Cond.R.32:1.16(d) Iowa State Bar Assoc. Ethics and Practice Guidelines Committee, Ops 08-02 (2008) and 07-08 (2007); G. Sisk & M. Cady, 16 Ia. Prac., Lawyer and Judicial Ethics, section 5:15(c).

39 See Prof.Cond.R. 32:1.5(b); Iowa State Bar Assoc. Ethics and Practice Guidelines Committee, Op. 08-02 (2008), Iowa Code section 602.10116.


41 See supra n.3.
A file destruction notice should inform the client when the file will be destroyed:

*It is the policy of the firm that we will keep and store your file for _____ years after the date of the last legal service as evidenced by the date of the letter closing the file. Thereafter, the file and all of its contents will be permanently destroyed without further notice to you. You may retrieve your file and all of its contents at any time during that period.*

Each file that is scheduled to be destroyed should be reviewed again by the lawyer. A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client’s position in a matter for which the applicable statutory limitations period has not expired. This will require a lawyer to consider all relevant statutes of limitations, substantive law, and the nature of the client’s case before destroying the client’s file. If a client cannot be located, but the file contains property owned by the client, it should be “segregated and preserved.”

Although the Iowa Rules of Professional Conduct do not prescribe any particular method for the destruction of client files, a lawyer is obligated to maintain client confidentiality even after the representation terminates, including when disposing of a client’s file. Cross-hatch shredding or incineration of closed files are recommended methods of destruction of client files. If third party vendors are contracted to destroy records, the lawyer is primarily responsible to ensure the vendor uses methods that minimize the risk of disclosure of confidential information. Destruction of email and other digital records also requires the use of technologically secure methods to preserve confidentiality. Lastly, it is recommended that physical hard drives be wiped pursuant to the National Institute of Standards and Technology guidelines prior to resale or disposal of electronic devices.

After a file is destroyed, a lawyer should maintain a permanent “destroyed client file register” in either paper form or an electronic database organized by client and matter number, that includes:

1. The date of the opening and closing of the file;
2. The date of the termination of the representation;
3. A copy of the letter to the client notifying the client of the pending destruction of the file;
4. The name of the lawyer(s) that reviewed the file at closing, prior to its destruction, and who authorized the destruction; and
5. Receipt for a file transferred to the client or a subsequent lawyer at the end of representation.

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42 G. Cunningham and J. Montana, The Lawyers’ Guide to Records Management and Retention (ABA 2006), at 117,
43 See Prof.Cond.R. 1.6.
44 See NIST Special Publication 800-88 Rev. 1.
Electronic Correspondence

Email messages constitute papers or property to which the client is entitled under Prof.Cond.R. 1.16(d). Like other forms of client papers and property, a lawyer’s ethical obligation to retain and safeguard materials relating to the representation of a client depends on the facts and circumstances of each representation. A lawyer should retain emails that have a substantive impact upon the client’s future representation. For example, a lawyer should retain an email that communicates and evaluates a settlement offer from an insurance company but may discard a nonsubstantive email confirming a meeting or providing directions to a deposition.

The retention and maintenance of client related emails should be incorporated into the firm’s file retention policy. A lawyer is responsible for following the firm’s email policy and understanding the underlying technology that creates and stores the emails. Failure to do so may cause the inadvertent loss of important lawyer-client communications that adversely affect the client’s future legal needs. Consequently, a lawyer should undertake steps to collect and store emails by client and matter to ensure they are physically or electronically associated with the client file.

Digital Media and “Cloud” Storage of Client Files

As law firms adopt digital records as the primary method for producing and storing client papers and files, lawyers must ensure client information is securely stored. Lawyers who continue to handle paper documents may consider digital scanning as an alternative to traditional file storage methods. The Iowa Rules of Professional Conduct authorize the scanning and simultaneous destruction of paper documents; however, there are instances where original paper records may constitute part of the client’s file and will still need to be maintained. Client property or originals of legally significant documents in paper form should never be destroyed after scanning and should be returned to the client. When using technology, a lawyer is required to use the requisite “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation” including making decisions concerning the maintenance of digital client files. The dual application of Prof.Cond.R. 1.6 and 1.15 requires that any internal or external digital file storage method employed by a lawyer must be secure, and that reasonable measures be taken to protect the confidentiality and security of the client property.

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46 Id.
47 See Prof.Cond.R. 1.1, Comment [8].
48 Id.
“Cloud” File Storage

Although not required to do so, a lawyer should inform clients regarding the use of “cloud” storage of all or part of the client’s file. Some clients may have legitimate concerns about the level of security employed by vendors selected by the lawyer. A lawyer must exercise due diligence in selecting a vendor that the lawyer has determined will provide services consistent with the lawyer’s ethical obligations. Outside service providers hired for “cloud” storage of client files are considered nonlawyer assistants under Prof.Cond.R. 32:5.3(a), thus a lawyer must use reasonable efforts to ensure that a vendor’s “conduct is compatible with the professional obligations of the lawyer.”

The ABA has concluded that the Model Rules of Professional Conduct allow for the outsourcing of legal and nonlegal support services, if the lawyer makes reasonable efforts to ensure compliance with the rules relating to competency, confidentiality, and supervision.

The use of “cloud” storage systems should prompt the lawyer to consider a vendor’s compliance with the same confidentiality standards set forth in Prof.Cond.R. 32:1.6. In selecting a vendor, the lawyer must “act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”

Consequently, a lawyer using the services of an outside service provider for digital “cloud” storage is required to undertake reasonable efforts to prevent the unauthorized disclosure of client information. This may require a reasonable investigation by the lawyer of the methods employed by the third-party vendor. Factors to be considered in determining the reasonableness of the lawyer’s efforts to safeguard information, the likelihood of disclosure if additional safeguards are not employed, and the cost of employing additional safeguards.

At a minimum, the lawyer employing “cloud” storage methods should ensure:

1. The vendor understands the lawyer’s obligation to keep the information confidential;
2. The vendor is itself obligated to keep the information confidential; and
3. Reasonable measures are employed by the vendor to preserve the confidentiality of the files.

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49 See Prof.Cond.R. 32:1.4(a)(2) and 1.6
51 Prof.Cond.R.32:5.3(b).
53 Prof.Cond.R. 32:1.6, Comment [18].
54 See Prof.Cond.R. 32:5.3.
55 See Prof.Cond.R. 32:1.6, Comment [18].
Client Files and Succession Planning

A lawyer’s duty of competent representation includes safeguarding the client’s interest in the event of the lawyer’s death, disability, impairment, or incapacity.\textsuperscript{56} This can be ensured through a firm succession plan that contains explicit instructions to a named successor lawyer for the handling of open client files and matters, as well as closed client files maintained pursuant to a file retention policy.\textsuperscript{57} The instructions should include the location of the client files and, in the event the files are maintained electronically either locally or in the “cloud,” any necessary passwords or login information. Compliance with Iowa Court Rule 39.18 requires naming a designated representative with knowledge of the location of paper and electronic files and the ability to access these files.\textsuperscript{58}

The retirement or resignation of a lawyer can also present client file issues if the lawyer has never implemented an adequate file retention and destruction schedule. A lawyer considering retirement or resignation should take certain steps to ensure the proper transfer of the files to a successor lawyer or begin the process of inventorying and disposing of client files. The inventorying process should follow the aforementioned steps in this guide, including using reasonable efforts to contact former clients prior to the destruction of files.

APPENDIX 1
Record Retention

The Iowa Rules of Professional Conduct require IOLTA and trust account records for six years after termination of representation. All other records can be returned to clients at any time.

The following are general recommendations for a lawyer’s retention of other types of records.

<table>
<thead>
<tr>
<th>GENERAL GUIDELINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>TYPE OF RECORD</td>
</tr>
<tr>
<td>No Written Retention Policy</td>
</tr>
<tr>
<td>Written Retention Policy</td>
</tr>
<tr>
<td>IOLTA/Trust Account Records</td>
</tr>
</tbody>
</table>


\textsuperscript{57} Id.

\textsuperscript{58} See Iowa Court Rule 39.18 (2018)
## EXCEPTIONS

<table>
<thead>
<tr>
<th>TYPE OF RECORD</th>
<th>RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Files</td>
<td>10 years</td>
</tr>
<tr>
<td>Child Support/Alimony</td>
<td>6 years</td>
</tr>
<tr>
<td>Civil Judgments</td>
<td>6 years</td>
</tr>
<tr>
<td>Organization Charter, Stock/Unit Certificates, Minutes, and Bylaws/Operating Agreement</td>
<td>Indefinitely (To the extent lawyer is maintaining documents for client)</td>
</tr>
<tr>
<td>Criminal Convictions</td>
<td>Life of client</td>
</tr>
<tr>
<td>Custody Files</td>
<td>6 years after age of majority</td>
</tr>
<tr>
<td>Documents Under Seal</td>
<td>10 years</td>
</tr>
<tr>
<td>Estate Planning</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>Estate Probate Matters</td>
<td>Tax basis information should be retained indefinitely; all other documents retained at least 6 years after estate is settled</td>
</tr>
<tr>
<td>Real Estate Transactions</td>
<td>10 years. Retain abstracts, surveys, legal descriptions not of record, and chain of title information indefinitely</td>
</tr>
<tr>
<td>Real Estate Purchases</td>
<td>Indefinitely (to the extent lawyer is maintaining documents for client)</td>
</tr>
<tr>
<td>Securities</td>
<td>Contact SEC</td>
</tr>
<tr>
<td>Structured Settlements</td>
<td>Life of client</td>
</tr>
<tr>
<td>Tax Matters</td>
<td>Contact IRS</td>
</tr>
<tr>
<td>Title Documents</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>Trust Deeds</td>
<td>Indefinitely</td>
</tr>
<tr>
<td>Union Negotiations</td>
<td>Indefinitely</td>
</tr>
</tbody>
</table>
Sample 1: From Law Firm

Dear Former Client:

As you may recall, I represented you in a legal matter several years ago. It has now been more than _____ years since I closed that file. Under my firm’s office procedures I would customarily destroy the file at this point in time. Before doing so, however, I wanted to give you an opportunity to have the file returned to you. Accordingly, if you would like to have the file returned, please advise me by ___________. Unless I hear from you by that date, I will assume that you do not want the file and it will be destroyed.

Very truly yours,

Sample 2: From Minnesota Lawyers Mutual

Dear Client:

This letter will serve to confirm our recent conversation regarding the conclusion of our representation in the matter ________________, as the matter has reached its conclusion. I want to again express my gratitude for the opportunity to represent you in this matter and my appreciation for your business and your confidence in this firm’s work. As a reminder, our firm will retain the complete file for this matter for a minimum of ten years, but may destroy the file after ten years have passed without further notice to you. All original documents you provided to me were returned to you at our meeting of ____________, but the rest of the file remains at our office and will soon be placed in storage. You are welcome to pick up the file at any time, but please be advised that we will need advance notice in order to retrieve the file from storage and copy the documents, per our retainer agreement, at your expense. If you choose not to collect the file in the next ten years, it will be destroyed in accordance with our file destruction policy, taking care to preserve your confidentiality and conform to environmental standards without further notice to you. Thank you again for entrusting this matter to our firm, it has been my pleasure to work with you. If you have any further questions regarding this matter, please do not hesitate to contact me.

Sample 3: From Minnesota Lawyers Mutual

Dear Former Client:

This letter will serve to inform you that representation in the matter ________________ concluded more than ten years ago and the file for that matter is slated for destruction on _______________. Please contact me if you would like to pick up the file from our office, or arrange to have the file delivered to you. If you do not wish to keep the file, please sign the enclosed form, indicating your consent to have the file destroyed and mail it back to my office using the enclosed stamped envelope. If I do not hear from you by ____________, I will assume the file can be destroyed. Once again, on behalf of the Firm, I would like to thank you for your business. It has truly been a pleasure to represent you and I hope to hear from you soon. If you should have any questions regarding the destruction of the file or anything else in this regard, please do not hesitate to contact me.
Sample 4: From CNA

Dear Client:

Thank you again for selecting our firm to represent you with respect to case/matter _________. This letter is being sent to confirm that case/matter _________ is now concluded and we will be closing our file, as our representation of you has terminated. Enclosed with this letter are our final invoice and any original documents related to your case/matter that we have not previously returned to you, as listed in the appendix. [Alternatively, we have previously returned to you all original documents related to your case/matter.] In accordance with our firm’s document retention policy, we will retain your legal file for ____ years from this date. At the expiration of this period, we will destroy these files unless you notify us in writing that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering such files.

In the event that you need legal representation in the future, I hope that you will consider engaging our law firm again. Thank you for allowing us to represent you in this matter.

Sample 5: From CNA

Dear Client:

Our firm recently revised our existing record retention and destruction policy covering files, records and data related to all engagements, including past representations. I have enclosed a summary of this policy for your information. This policy became effective on ____________ and applies to all current pending client matters as well as all future matters.

Additionally, on ___________, we will begin reviewing closed files for destruction in accordance with our revised policy. Those files that are older than the retention period specified in the revised policy will be destroyed on or after ___________. This will result in the destruction of our files for most matters that closed on or before ___________.

As you know, for some time it has been our policy to return all of your original records to you at the conclusion of each engagement. You are responsible for maintaining these records for your business or personal needs.

If you would like to obtain copies of file records from closed matters, please provide our office with a letter or e-mail no later than ____________, listing the specific records you would like researched and copied. We will bill you at our regular hourly rates to retrieve these records, as well as for all expenses incurred in connection with such requests. If we do not hear from you by that date, we will begin the destruction of all records contained in closed files per the policy as indicated in the summary.
Dear Client:

This letter is sent to confirm that we have concluded our work for you with respect to. I am pleased that we were able to represent you. Working with you has been a pleasure.

Our file pertaining to the matter will be retained by us for _______ years, pursuant to the Firm’s record retention policy. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of the file at the end of that period without further notice to you.

Because we may need to contact you during this period, please inform us, in writing, of any changes in your name, address, telephone number, contact person, or email address and of any other relevant changes in your contact information.

We enclose the following documents, which we deem your property:

We consider this matter closed. If other matters arise for which our Firm can be of assistance, please do not hesitate to contact us. We would be delighted to work with you again on a future matter.

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Sample 6: From Law Firm

Dear Client:

We are in the process of scanning closed files in our office. We are returning the original documents in this matter. We suggest that you keep all your information relating to this matter in a safe place where you can easily locate it. Your file in our office will now be stored in an electronic format. This means we will not retain a hard (paper) copy of the file, but will keep an electronic version on a secure computer server. Of course, if you have a need for a copy of these documents after the paper file has been destroyed, we will be able to print these documents from the electronic version of the file for the next six years. Upon expiration of six years from today's date, the electronic version of the file will be permanently destroyed and we will no longer be able to retrieve any of the documents for you.

Should you have any questions or concerns regarding the information set forth above, please do not hesitate to contact me.
Sample 8: From ALPS Property & Casualty Insurance Company

Dear Client:

This matter now is closed. We are returning your original [records, documents] related to your case and we are closing our file. As we discussed during our initial interview with you, your file will be kept for a period of [number of] years. The file will then be destroyed unless you request that we store it longer or return it to you at that time. If you wish to have us to store the file for a longer period or return it to you when our normal retention period expires, you must give us written notice of that desire within thirty days of receipt of this letter. Please note that if it is your wish to not have your file destroyed, you will need to be responsible for keeping us informed as to how to reach you should your contact information ever change.

Sample 9: From ALPS Property & Casualty Insurance Company

Dear Client:

Our law firm destroys files [number of] years after they are closed. We have retained your file for that period of time and are now preparing to have it destroyed. If your desire is to have us continue to store it or see that it is returned to you, you must send us a letter telling us of your desire and this must be done no later than thirty days after the date you receive this letter.

Sample 10: From Iowa State Bar Assoc. Ethics and Practice Guidelines Committee, Op. 08-02

File Destruction Policy (to be included in Engagement Letter)
It is the policy of the firm that we will keep and store your file for <no less than six> years after the date of the last legal service as evidenced by the date of the letter closing the file. Thereafter, the file and all of its contents will be permanently destroyed without further notice to you. You may retrieve your file and all of its contents at any time during that period.

File Destruction Closing Letter
Your case has now been closed. Under the firm’s file destruction policy, we will keep your file for 10 years from the above date after which time the file will be permanently destroyed. You may retrieve your file and its contents at any time during that period.

Notice of File Destruction
You are advised that as per the File Destruction Closing Letter dated <DATE> a copy of which is attached, your file will be destroyed any time after <DATE>. You may retrieve the file at any time before that date.
The Iowa State Bar Association

Member Benefits

Take advantage of all the benefits offered.

Trustifi
The ISBA is providing Trustifi free of charge to ISBA members. Emailing your client is certainly convenient, but are you confident that it’s really secure? With Trustifi, you can easily integrate a military-grade encryption program and more into your email communications. Support staff emails can be added for $25 per email annually.

iowabar.org/Trustifi

Fastcase
Normally priced at $995 per lawyer annually, members of the ISBA enjoy Fastcase for free! Fastcase is the leading next-generation legal research service that puts a comprehensive national law library and smarter and more powerful searching, sorting, and visualization tools at your fingertips.

iowabar.org/Fastcase

IowaDocs®
IowaDocs® is a subscription library of templates consisting of legal forms created, endorsed, and copyrighted by the ISBA. Each template asks the user specific questions and then automatically creates customized documents based on the answers given.

iowadocs.net

Engage
Engage is a private, online professional community for each ISBA committee or section, built on the concept of listservs, only with enhanced features. Engage offers each committee and section a variety of tools to help members connect, network, and work collaboratively with fellow members.

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View more member benefits at iowabar.org/benefits