

PREPARING TO CLOSE OR ACQUIRE A LAW PRACTICE

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CHAPTER 6

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Dear Texas Attorneys, Judges, Attorney Relatives and Staff, and Members of the Public:

Law practices are not immune from the unfortunate and unexpected events and accidents which occur in everyday life. An attorney's illness, incapacity, or even suspension due to misconduct, can result in the temporary or permanent closure of a practice.

Although difficult to contemplate, having a contingency plan in place is part of being a good lawyer and will help to 1) fulfill ethical duties towards clients, 2) save Judges, relatives, colleagues and attorney staff from some of the difficulties of a temporary or permanent closing of a law practice, 3) facilitate obtaining new counsel, and 4) reduce potential misconduct and/or malpractice claims.

The following materials are provided to 1) help Texas Attorneys plan and prepare for events that could render them unable to practice law, and 2) help Texas Judges, members of the public, as well as relatives, colleagues and staff of attorneys, with the closure of an attorney's practice and finding new counsel, if necessary. Included are resources, as well as sample checklists, court documents and correspondence.

- [**How to Protect Your Clients and Your Firm in the Event of Your Death, Disability, Impairment, or Incapacity**](#)
- [**Checklist for Closing Another Attorney's Office**](#)
- [**What to Do if Your Attorney Dies, Disappears, Becomes Disabled or is Suspended or Disbarred**](#)
- [**What to Do When Your Boss or Relative is No Longer Able to Practice Law: A Checklist for Staff and Family Members**](#)
- [**Guidelines for Judges**](#)

These materials were prepared by staff of the State Bar's Law Practice Management Program and Office of the Chief Disciplinary Counsel. The State Bar of Texas would like to acknowledge and thank the Oregon State Bar and Texas practitioner Jimmy Brill for their generosity, guidance and input. Some of these documents are adapted from the Oregon State Bar Professional Liability Fund handbook *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, copyright 2006. For restrictions on use of the materials contained herein please see requirements for use reprinted below.

Hopefully, these materials are useful to you. Please contact Lisa Villarreal-Rios, Special Programs Coordinator for the Office of the Chief Disciplinary Counsel, at 800.204.2222, ext. 1350 or lisa.villarrealrios@texasbar.com with any comments or concerns.

Best regards,

DISCLAIMER

THE INFORMATION CONTAINED HEREIN IS FOR THE USE AND BENEFIT OF TEXAS ATTORNEYS AND THE PUBLIC. NOTHING ON THIS WEBSITE CONSTITUTES LEGAL ADVICE OR ESTABLISHES A STANDARD OF CARE FOR TEXAS ATTORNEYS. ATTORNEYS SHOULD CONDUCT THEIR OWN LEGAL RESEARCH TO ENSURE THAT THEY FULLY COMPLY WITH THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

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How to Protect Your Clients and Firm in the Event of Death, Disability, Impairment, or Incapacity

This information is designed to help you protect your clients' interests in the event you are suddenly rendered unable to practice law. With some advanced planning, you can ensure a smoother transition for your clients and allay potential ethical pitfalls.

Successor Attorney

If you suddenly become unable to practice law, someone will need to review your case files to ascertain if there are pending or upcoming filing dates, contact clients to return or transfer files, handle the firm's financial affairs, and deal with other issues that may need immediate attention. Due to the content contained in the files, and the need to be able to spot legal issues, the best person to do this is presumably an attorney, or "successor attorney."

By determining in advance who will serve as your successor attorney, you offer better protection for your clients and a faster transition out of law practice. Once you have found a suitable attorney who agrees to wind down your practice, it is important to discuss what duties the successor attorney will need to perform, the scope of their responsibility, what event will trigger the successor attorney's service, and the systems you employ in your firm to make the job easier to accomplish. Be sure to reduce your agreement to writing so the successor attorney will have the legal authority to perform the duties you have both discussed.

1. Scope of Responsibility

The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

2. Duration and Triggering Event

You will also want to establish what event will trigger the successor attorney to enter your practice and start winding down your business and who will determine that this event has occurred. Will it be a doctor, your spouse, the good faith belief of the successor attorney? How long will the task of wrapping up the practice take?

3. Duties to Be Performed

Include in your written agreement a signed consent authorizing the successor attorney to perform certain tasks, for example:

- Review your files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

4. **Power of Attorney**

If you want the successor attorney to handle your firm's financial affairs, access to your bank accounts will be required. While a written agreement may be sufficient, some banks require that the successor attorney have a Power of Attorney. Check with your bank to see what documents they will require in order to honor your wishes with respect to the closure of your firm. Again, you'll need to think through what sort of Power of Attorney you want to grant the successor attorney and how and when the Power of Attorney will be triggered. Will the successor attorney's Power of Attorney be triggered by a specific event, who will determine that the triggering event has occurred, what specific powers will be granted, and what will determine the duration?

5. **Notifying Your Client**

You will need to notify your clients that you have arranged for a successor attorney to wind down your practice. Since the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. The easiest way to notify your clients and obtain their consent is to put a provision in your retainer and fee agreements.

6. **Ethical Issues**

- **Confidentiality**: The client must give consent to have his confidential information shared with successor attorney.
- **Conflicts**: The successor attorney will need to conduct a conflict check if the review of client confidential information is being conducted in order to return or transfer the file.
- **Barratry**: If the successor attorney is contacting your clients or wishes to represent your clients, he or she should be aware of potential restrictions in the Disciplinary Rules with respect to barratry or solicitation:
- Notification of Attorney's Cessation of Practice. See Texas Disciplinary Rule 13.01

Authorized Signer on the Trust Account

In order to return funds to clients and remit payment for work performed, someone will need to have access to your trust account. If you do not make arrangements, your clients may not receive their funds until a court orders access to the trust account. You may grant this

authority to your successor attorney, a close family member, or your personal representative.

Office Procedures

Maintaining good office procedures will aid your successor attorney and provide increased protection for your clients.

1. **Contact List**

Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.

2. **Passwords and Account Numbers**

Create a list of passwords for computer and network log-in, email accounts, bank accounts, credit cards and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping.

3. **Fee Agreements**

Maintain written fee agreements for each client matter.

4. **Separate Files**

Maintain a separate file for each client matter.

5. **Trust Account**

Maintain a separate trust account and dedicated ledger for each client whose funds you hold.

6. **Keep Time and Billing Up-to-date**

7. **Docket Control**

Keep a calendaring system with applicable deadlines.

8. **Termination Letter**

When you have closed a client matter, send a termination letter and include any original documents.

Checklist for an Attorney Who Closes Another Attorney's Office

This checklist is intended as a guideline only as circumstances surrounding the closing of a law office vary.

1. Check the attorney's calendars to look for case deadlines.
2. Search the attorney's office to look for documents that need to be filed.
3. Open and review all unopened mail, especially certified mail, and file it.
4. Review electronic sources to ensure that the client file is complete and up to date. Review the firm's electronic records for client-related material, including such things as e-mail communications, instant messages, or other documents generated during the course of the case, especially those communications that indicate pending deadlines.
5. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
6. Review active client files to determine which cases need to be dealt with first.
7. Make sure that any case with a statute of limitations running, or that is set for hearing or trial, are handled immediately. Look for cases with discovery settings. It is important to handle these cases immediately.
8. Contact the client for matters that are urgent or set for the near future. Ask the client for permission to reset. As an attorney assisting with closing down the practice, make sure these scheduling arrangements do not pose a conflict of interest for you and/or your clients.
9. Contact courts and opposing counsel immediately for files that require court appearances or have discovery pending. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.
- 10. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney. Inform the clients about time limitations and time frames important to their cases.**
11. If the client wishes for the file to be sent to new counsel, have the client sign an authorization for the **original** file to be released to the new attorney.
12. If the client is obtaining a new attorney and the case is pending in court, be certain that a Substitution of Attorney is filed.

13. If the client wants to pick up their file, inform the client of days and times when they can pick up their **original** file.
14. The law firm may want to keep a copy of the file. If so, the file should be copied at the law firm's expense.
15. Try to ensure that a phone number is available for the clients to either speak with someone about their file or so that the client can leave a message.
16. Texas Disciplinary Rule of Professional Conduct 1.14(a) provides, in part, that "Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Client files are considered "other client property." *Hebisen v. State*, 615 S.W.2d 866 (Tex.Civ.App. – Houston 1981)
17. The office may want to make concerted efforts to contact closed file clients when those closed cases: 1) involve a minor; 2) involve signed original wills; 3) involve contracts or other agreements that are still being paid off at the end of five years; 4) in which a judgment should be renewed; 5) support and custody files in which the children are minors or the support obligation continues; 6) corporate books and records; 7) adoption files; 8) intellectual property files; and 9) any other file in which it appears the client's or attorney's interest may be ongoing.
18. If a client determines he/she does not want the closed file, obtain a signed release giving the client's permission to destroy the file.
19. When it is determined that a client file can be destroyed, the file should be shredded or otherwise appropriately destroyed.
20. If you have authorization to handle the Attorney's financial matters, look around the office for checks or other funds that have not been deposited. Determine whether funds should be deposited or returned to the clients, as some funds may not have been earned.
21. Prepare a final billing statement showing any outstanding fees due.
22. Prepare an accounting for any client who has money being held in trust.
23. Obtain instructions from clients concerning any funds belonging to them that are being held in trust. Unearned trust account funds should be either returned to the clients or forwarded to their new attorneys.
24. If you are authorized to do so, handle financial matters, and pay business expenses.

WHAT TO DO IF YOUR ATTORNEY DIES, DISAPPEARS, BECOMES DISABLED, OR IS SUSPENDED OR DISBARRED

When a client is unable to contact an attorney for any reason Client's valuable legal rights may be compromised. Therefore, it is important to: 1) obtain your file; 2) ascertain the status of the case, including any pending deadlines or court settings; and 3) hire new counsel if you are unable to locate your attorney. The following are suggestions that may assist you in protecting your rights and ensuring that your legal matter is handled appropriately.

1. Gather information regarding the location of your file.
 - a. If the attorney **disappears**, first try to ascertain where/if s/he has relocated. To ascertain if the attorney has relocated:
 - i. Contact the State Bar of Texas to determine if the attorney has provided new contact information;
 - ii. If not, contact the landlord of the building to determine if the attorney left a forwarding address; or
 - iii. Send a letter, certified mail return receipt requested, to determine if/where the letter is delivered (you may have to check the USPS website for the location of the delivery).
 - b. If the attorney becomes **disabled or dies**:
 - i. Determine if another attorney has agreed to assume responsibility for contacting clients, returning files and/or assume the practice,
 - ii. Determine who is the executor or administrator of the estate, and/or
 - iii. Contact the building supervisor, landlord, or other tenants in the attorney's office building.
 - c. If the attorney is **suspended or disbarred**:
 - i. The attorney will generally be ordered to notify clients, and return files and unearned fees, but
 - ii. If the attorney does not notify you, then follow procedures suggested in other sections of this checklist.
2. If your efforts to locate your attorney have failed or your attorney has died, become disabled, or been suspended or disbarred, then you need to obtain new counsel immediately. Note the following:
 - a. If your legal matter includes a court case, your new attorney will need to file a Notice of Substitution of Counsel with the court.
 - b. If your legal matter is not in litigation, your new attorney will need to notify opposing attorneys and/or parties as appropriate.
 - c. You may lose legal rights if you delay in pursuing other possible remedies against the attorney. Contact another lawyer if you want to determine what other legal rights you may have.
3. Contact the court to determine if there are any pending court dates of which you are not aware and notify the court of the situation in writing.
 - a. You or your new attorney may need to request a continuance of any court settings.

4. Contact the building supervisor or landlord and retrieve your file from the attorney's office.
 - a. The client owns the file. Therefore, you are entitled to receive your property if it is located in the attorney's former office or if the landlord has possession of the file.
 - b. If you are unable to gain access to the file, obtain copies of all pleadings on file with the court.
5. If you believe your attorney engaged in illegal activity report the conduct to the proper authorities (police, county attorney, and/or district attorney) in the county where the conduct occurred.
 - a. Contact the Client-Attorney Assistance Program (CAAP) at (800) 932-1900 or (800) 204-2222, ext. 1790 to request their assistance.
6. File a grievance with the Office of Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12497, Austin, Texas 78711-2487. (Grievance forms are available on the [State Bar of Texas website](#)) or you may call 800.204.2222, ext. 1350.
7. How to obtain a refund of any unearned fees you may have paid the attorney.
 - a. If someone has been appointed or designated to sign checks on the attorney's trust account, request unearned fees from that person.
 - b. If there is an administrator of executor, file a claim against the estate.
 - c. File a grievance with the Office of Chief Disciplinary Counsel, State Bar of Texas.
 - d. Based on the circumstances, you may be eligible for payment from Client Security Fund. Request a brochure describing eligibility and requirements from the State Bar of Texas in writing to P.O. Box 12487, Austin, Texas 78711-2497 or by calling 877-953-5535.
8. If you are unable to obtain your file or locate the attorney, you can file a Petition in district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice.

What to Do When Your Boss or Relative Is No Longer Able to Practice Law: A Checklist for Staff and Family Members

When an attorney is, with or without warning, unable to practice law and is a sole practitioner, what to do with the attorney's law practice can be bewildering to the attorney's staff, if there is any staff, and devastating to the family. This checklist is intended as a guideline to help the incapacitated or deceased attorney's staff and/or family to close down the attorney's practice.

1. First, remember that although it may seem an impossible task to close down an attorney's office, it has been done by others, including those without any legal experience, and it can be done by you.
2. For remaining staff, if there is any way you can afford it, please consider staying around to help close down the practice. Some staff might agree to help close the practice while looking for another job, helping out a few hours here and there. The family will be very grateful.
3. For the family member left with the attorney's practice, try to get the attorney's staff to stay with you for at least a month to help close down the practice. This will probably work fine if you can afford to pay the staff and are willing to provide a good reference. Make sure you are flexible about allowing the staff to interview for new jobs.
4. If an attorney friend offers to help, a family member or staff person should contact the clients and ask for the clients' permission for the attorney friend to contact them. With permission to contact the clients, the attorney friend is not engaging in solicitation by contacting the clients.
5. If no one has stepped forward to help, and you feel that you need help, consider contacting a law section or local bar association the incapacitated or deceased attorney was associated with. In the past, law sections such as the local Family Law Section, or the local bar association, has had members help close an attorney's practice.
6. If it is left to you to close the practice, start by checking the attorney's calendars to look for case deadlines.
7. Search the attorney's office to look for documents that need to be filed.
8. Open and review all unopened mail, especially certified mail, and file it.
9. Review electronic sources to ensure that the client file is complete and up to date. Review the firm's electronic records for client-related material, including such things as e-mail communications, instant messages, or other documents generated during the course of the case, especially those communications that indicate pending deadlines.

10. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
11. Review active client files to determine which cases need to be dealt with first.
12. Make sure that any case with a statute of limitations running, or that is set for hearing or trial, are handled immediately. Look for cases with discovery settings. It is important to handle these cases immediately not only to protect the clients' interests but to prevent malpractice lawsuits against the attorney's estate.
13. Contact the client for matters that are urgent or set for the near future. Give the client the contact information for the court so that the client can reset any pending deadlines as necessary.
14. Contact courts and opposing counsel immediately for files that require court appearances or have discovery pending.
15. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney. Inform the clients about time limitations and time frames important to their cases.
16. If the client wishes for the file to be sent to new counsel, have the client sign an authorization for the original file to be released to the new attorney.
17. If the client wants to pick up their file, inform the client of days and times when they can pick up their original file.
18. The law firm may want to keep a copy of the file. If so, the file should be copied at the law firm's expense.
19. Try to ensure that a phone number is available for the clients to either speak with someone about their file or so that they can leave a message.
20. Texas Disciplinary Rule of Professional Conduct 1.14(a) provides, in part, that "Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Client files are considered "other property." *Hebisen v. State*, 615 S.W.2d 866 (Tex.Civ.App. – Houston 1981)
21. The office may want to make concerted efforts to contact closed file clients when those closed cases: 1) involve a minor; 2) contained executed original wills; 3) involve contracts or other agreements that are still being paid off at the end of five years; 4) in which a judgment should be renewed; 5) support and custody files in which the children are minors or the support obligation continues; 6) corporate books and records; 7) adoption files; 8) intellectual property files; and 9) any other file in which it appears the client's or attorney's interest may be

- ongoing. If you have questions about what to do with these files, ask an attorney.
22. If a client determines he/she does not want the closed file, obtain a signed release giving the client's permission to destroy the file.
 23. When it is determined that a client file can be destroyed, the file should be shredded or otherwise appropriately destroyed.
 24. If you have authorization to handle the attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine whether funds should be deposited or returned to the clients, as some funds may not have been earned.
 25. Obtain instructions from clients concerning any funds in the attorney's trust account. Unearned funds should be either returned to the clients or forwarded to their new attorneys.
 26. Prepare a final billing statement showing any outstanding fees due.
 27. Prepare an accounting for any client who has money being held in trust.
 28. Obtain instructions from clients concerning any funds belonging to them that are being held in trust. Unearned trust account funds should be either returned to the clients or forwarded to their new attorneys.
 29. If you are authorized to do so, handle financial matters, and pay business expenses.

**What to Do When an Attorney has
Abandoned his Practice, is Incapacitated, or Deceased:
Assumption of Jurisdiction
A Guideline for Judges or Other Interested Persons**

Attorneys are aging. Because of a weak economy many attorneys are sole practitioners (while others never wanted anything other than to practice on their own) and are forced to work as long as they can. It is a combustible combination.

Unless an attorney practices in a smaller location or before the same judge or judges, it may take a while to learn that an attorney has become incapacitated or has died. A client may learn an attorney is no longer available when the attorney's phones are disconnected and the office appears abandoned. A judge may learn the attorney is unavailable when a client contacts the court for information on what to do to continue with their case when their attorney has disappeared.

The Texas Rules of Disciplinary Procedure, Part XIII, provides for the Cessation of Practice as follows:

13.02 Assumption of Jurisdiction: A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition a district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice. If the attorney has died, such petition may be filed in a statutory probate court. The petition must be verified and must state the facts necessary to show cause to believe that notice of the cessation is required under this part. It must state the following:

- A. That an attorney licensed to practice law in Texas has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.
- B. That cause exists to believe that court supervision is necessary because the attorney has left client matters for which no other attorney licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.
- C. That there is cause to believe that the interests of one or more clients of the attorney or one or more interested persons or entities will be prejudiced if these proceedings are not maintained.

13.03 Hearing and Order on Application to Assume Jurisdiction: The court shall set the petition for hearing and may issue an order to show cause, directing the attorney or his or her personal representative, or if none exists, the person having custody of the attorney's files, to show cause why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more attorneys licensed to practice law in Texas to take such action as set out in the written order of the court including, but not limited to, one or more of the following:

- A. Examine the client matters, including files and records of the attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the attorney of the assumption of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this part. Except for intentional misconduct or gross negligence, no person acting under this part may incur any liability by reason of the institution or maintenance of a proceeding under this Part XIII. No bond or other security is required.

The following forms can be downloaded at:

<https://www.nysba.org/PlanningAheadGuideForms/>

Appendix_F_Agreement_to_close_law_practice_in_the_future (Adobe PDF File)
Appendix_G_Authorization_and_consent_to_close_law_practice_short_form (Adobe PDF File)
Appendix_H_Limited_power_of_attorney_to_manage_law_practice_at_a_future_date (Adobe PDF File)
Appendix_I_PCs_and_PLLCs_Appoint_the_appropriate_agent (Adobe PDF File)
Appendix_J_Letter_from_closing_or_caretaker_attorney (Adobe PDF File)
Appendix_K_Request_for_file (Adobe PDF File)
Appendix_L_Acknowledgement_of_receipt_of_file (Adobe PDF File)
Appendix_M_Authorization_for_transfer_of_client_file (Adobe PDF File)
Appendix_N_FAQs_re_document_destruction_and_preservation (Adobe PDF File)
Appendix_O_Letter_from_planning_attorney (Adobe PDF File)
Appendix_P_Letter_from_firm_offering_to_continue_representation (Adobe PDF File)
Appendix_Q_Law_office_list_of_contacts (Adobe PDF File)
Appendix_R_Checklist_for_the_executor_of_a_solo_practitioner (Adobe PDF File)
Appendix_S_Special_provisions_for_attorneys_will (Adobe PDF File)
Appendix_T_Transfer_of_a_law_practice (Adobe PDF File)
Appendix_U_Checklist_of_concerns (Adobe PDF File)
Appendix_V_Sample_asset_purchase_agreement (Adobe PDF File)
Appendix_W_Interruption_of_a_practice_due_to_a_lawyers_addiction (Adobe PDF File)
Appendix_X_Checklist_for_lawyers_business_disaster_planning (Adobe PDF File)
Appendix_Y_Relevant_excepts_from_the_CPLR (Adobe PDF File)
Appendix_Z_Disciplinary_rules_and_ethics_opinions (Adobe PDF File)
Appendix_AA_Ten_things_not_to_do_when_you_retire (Adobe PDF File)

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http://www.americanbar.org/publications/gp_solo/2012/july_august.html

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[Practice for Sale: Selling a Practice](#)

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