

# Lawyers in Transition: Protecting the Present and Planning for the Future

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# Planning Ahead:

Protecting Your Client's Interest  
In The Event Of Your Disability,  
Retirement Or Death



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THE MISSISSIPPI BAR

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**Disclaimer**

**This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Mississippi, nor does it represent a complete analysis of the topics presented. Rather, it is intended to provide guidelines and materials to help you create the plan for your practice. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice.**

**This Handbook was 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 2015. All rights are reserved except that members of The Mississippi Bar may use this material for assistance with their own law practice or to help another attorney close his or her office.**

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## THE DUTY TO PLAN AHEAD

Whether you have come to this Manual because you are on the verge of retiring, hoping to retire one day or hoping to protect your family, your practice and clients in the event something unfortunate happens, the same basic considerations apply. The more planning you do on the front the end, the easier the transition for your family, clients, and those lawyers helping to transition your practice. It is hard to think about events that could render you unable to continue practicing law. Unfortunately, accidents, unexpected illness, and untimely death do occur. And, if any of these events happen to you, your clients' interests may be unprotected.

An increasing number of states are requiring lawyers to identify a fellow lawyer to act as an "Inventory or Assisting Attorney." While Mississippi does not have a specific requirement, existing duties in the Mississippi Rules of Professional Conduct suggest the importance of succession planning. *See* Miss. R. Prof. Conduct 1.1, 1.3, 1.4, 1.15 and 1.16. You must remember that when a client hires a lawyer, the client trusts that lawyer to diligently protect their interests, safeguard their property and map out a strategy to secure their future. Clients do not have a "Plan B" if they suddenly need a new lawyer. It is the lawyer's obligation to set up that "Plan B" for his clients. To fulfill these obligations upon a lawyer's disability or death, the lawyer should prepare a plan that provides for the maintenance and protection of the client's interest.

For this reason a lawyer's duty of competent representation includes arranging to safeguard the clients' interests in the event of the lawyer's death, disability, impairment or incapacity. ABA Formal Op 92-369; *See Specht v. U.S.* 2015 WL 74539 (SD Ohio 2015)(in underlying case that gave rise to the legal malpractice claim, client's estate was held liable for \$1.2 million in late filing fees and penalties caused by lawyer's failure to safeguard clients' interest); *See also Cabrera v. Collazo*, 979 NYS2d 326 (2014)(attorney's death not an excuse for allowing statute of limitations to expire when death was foreseeable.)

In addition, many commercial malpractice carriers require the lawyers they insure to make arrangements for office closure in the event of death or disability. The Bar has created this handbook to help you develop your own plan to fulfill your ethical responsibilities and protect your clients. We hope you find these materials helpful.

## TERMINOLOGY AND FORMS

The term *Assisting Attorney* as used throughout this handbook refers to the lawyer you have made arrangements with to close your practice. This attorney may be an *Inventory Attorney*, lawyer with the authority to review client files, make determinations as to immediate actions needed, and notify clients of the lawyer's death or inability to practice to law due to permanent or temporary disability, or a *Successor Attorney*, a lawyer with the authorizations of an Inventory Attorney but who also intends to continue or take over your law practice.

The term *Authorized Signer* refers to the person you have authorized as a signer on your lawyer trust account.

The term *Receiver* refers to a lawyer appointed pursuant to the Rules of Discipline for the Mississippi State Bar Association and may be the same person as your Inventory Attorney.

The term *Planning Attorney* refers to you, your estate, or your personal representative.

The sample *Agreement – Full Form*, provided in this handbook, authorizes the Inventory or Assisting Attorney to transfer client files, sign checks on your general account, and close your practice. This form also provides for payment to the Assisting Attorney for services rendered and designates the procedure for termination of the Inventory or Assisting Attorney's services. A variation is also included in this form to provide a Successor Attorney with the option to purchase the law practice. In addition, the form provides for the appointment of an Authorized Signer on your lawyer trust account. The *Agreement – Full Form* is a sample only. It will need to be modified to fit your specific needs and the arrangements you have reached with the lawyers helping to close your practice.

The sample *Agreement – Short Form*, also provided in this handbook, includes authorization to sign on your general account and consent to close your office. It also provides for the appointment of an Authorized Signer on your lawyer trust account. It does not include many of the authorizations found in the full form version, but it does include the authorizations most critical to protecting your clients' interest.

The sample pleadings, also provided in this handbook provide guidance for your Inventory or Assisting Attorney to be appointed as a Receiver and assist him or her in fulfilling those obligations.

## IMPLEMENTING THE PLAN

The first step in the planning process is for you to find someone – an attorney – to close or temporarily manage your practice in the event of your death, disability, impairment or incapacity.

The arrangements you make for closure of your office should include a signed consent form authorizing the Assisting Attorney to contact your clients for instructions on transferring their files, authorization to obtain extensions of time in litigation matters when needed and authorization to provide all relevant people with notice of closure of your law practice. (See sample *Agreement – Full Form* and *Sample Agreement – Short Form* provided in this handbook.)

The agreement could also include provisions that give the Assisting Attorney authority to wind down your financial affairs, provide your clients with a final accounting and statement, collect fees on your behalf, and liquidate or sell your practice. Arrangements for payment by you or your estate to the Assisting Attorney for services rendered can also be included in the agreement. (See sample *Agreement – Full Form* provided in this handbook.)

At the beginning of your relationship, it is crucial for you and the Assisting Attorney to establish the scope of the Assisting Attorney's duty to you and your clients, if the Assisting Attorney represents you as your attorney, he or she may be prohibited from representing your clients on some, or possibly all, matters. Under this arrangement, the Assisting Attorney would owe his or her fiduciary obligations to you. For example, the Assisting Attorney could not inform your clients of your legal malpractice or ethical violations unless you consented. However, if the Assisting Attorney is not your attorney,

he or she may have an ethical obligation to inform your clients of your errors. (See What If? Answers to Frequently Asked Questions, in this handbook.)

Whether or not the Assisting Attorney is representing you, that person must be aware of conflict of interest issues and much check for conflicts if he or she (1) is providing legal services to your clients or (2) must review confidential file information to assist with transferring clients' files.

In addition to arranging for an Assisting Attorney, you may also want to arrange for an Authorized Signer on your trust account. It is best to choose someone other than your Assisting Attorney to act as Authorized Signer on your trust account. This provides for checks and balances, since two people will have access to your records and information. It also avoids the potential for any conflicting fiduciary duties that may arise if the trust account does not balance.

Planning ahead to protect your clients' interest in the event of your disability or death involves some difficult decisions, including the type of access your Assisting Attorney and/or Authorized Signer will have, the conditions under which they will have access, and who will determine when those conditions are met. These decisions are the hardest part of planning ahead.

If you are incapacitated, for example, you may not be able to give consent to someone to assist you. Under what circumstances do you want someone to step in? How will it be determined that you are incapacitated, and who do you want to make this decision?

One approach is to give the Assisting Attorney and/or Authorized Signer access only during a specific period or after a specific event and to allow the Assisting Attorney and/or Authorized Signer to determine whether the contingency has occurred. Another approach is to have someone else (such as a spouse or partner, trusted friend, or family member) keep the applicable documents (such as a limited power of attorney for the Assisting Attorney and/or the Authorized Signer) until he or she determines that the specific event has occurred. A third approach is to provide the Assisting Attorney and/or Authorized Signer with access to records and accounts at all times.

If you want the Assisting Attorney and/or Authorized Signer to have access to your accounts contingent on a specific event or during a particular time period, you have to decide how you are going to document the agreement. Depending on where you live and the bank you use, some approaches may work better than others. Some banks require only a letter signed by both parties granting authorization to sign on the account. The sample agreements provided in this handbook should be legally sufficient to grant authority to sign on your account. However, you and the Assisting Attorney and/or Authorized Signer may also want to sign a limited power of attorney. (*See Power of Attorney - Limited* provided in this handbook.) Most banks prefer a power of attorney. Signing a separate limited power of attorney increases the likelihood that the bank will honor the agreement. It also provides you and the Assisting Attorney and/or Authorized Signer with a document limited to bank business that can be given to the bank. (The bank does not need to know all the terms and conditions of the agreement between you and the Assisting Attorney and/or Authorized Signer.) If you choose this approach, consult the manager of your bank. When you do, be aware that power of attorney forms provided by the bank are generally unconditional authorization to sign on your account and may include an agreement to indemnify the bank. Get written confirmation that the bank will honor your limited power of attorney or other written agreement. Otherwise, you may think you have taken all the necessary steps to allow access to your accounts, yet when the time comes the bank may not allow the access you intended.



If the access is going to be contingent, you may want to have someone (such as your spouse or partner, family member, personal representative, or trusted friend) hold the power of attorney until the contingency occurs. This can be documented in a letter of understanding, signed by you and the trusted friend or family member. (See *Letter of Understanding* provided in this Handbook.) When the event occurs, the trusted friend or family member provides the Assisting Attorney and/or Authorized Signer with the power of attorney.

If the authorization will be contingent on an event or for a limited duration, the terms must be specific and the agreement should state how to determine whether the event has taken place. For example, is the Assisting Attorney and/or Authorized Signer authorized to sign on your accounts only after obtaining a letter from a physician that you are disabled or incapacitated? Is it when the Assisting Attorney and/or Authorized Signer, based on reasonable belief, says so? Is it for a specific period of time, for example, while you are on vacation? You and the Assisting Attorney and/or Authorized Signer must review the specific terms and be comfortable with them. These same issues apply if you choose to have a family member or friend hold a general power of attorney until the event or contingency occurs. All parties need to know what to do and when to do it. Likewise, to avoid problems with the bank, the terms should be specific, and it must be easy for the bank to determine whether the terms are met.

Another approach is to allow the Assisting Attorney and/or Authorized Signer access at all times. With respect to your bank accounts, this approach requires going to the bank and having the Assisting Attorney and/or Authorized Signer sign the appropriate cards and paperwork. When the Assisting Attorney and/or Authorized Signer is authorized to sign on your account, he or she has complete access to the account. This is an easy approach that allows the Assisting Attorney and/or Authorized Signer to carry out office business even if you are just unexpectedly delayed returning from vacation. Adding someone as a signer on your accounts allows him or her to write checks, withdraw money, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. Under this arrangement, you cannot control the signer's access. These risks make it an extremely important decision. If you chose to give another person access to your accounts, your choice of signer is crucial to the protection of your clients' interest, as well as your own.

## ACCESS TO THE TRUST ACCOUNT

As mentioned above, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone else access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until the court takes jurisdiction over your practice and your accounts, pursuant to Miss. R. Disc. 11. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt Bar complaints, malpractice complaints, or other civil suits.

On the other hand, as emphasized above, allowing access to your trust account is a serious matter. You must give careful consideration to whom you give access and under what circumstances. If

someone has access to your trust account and that person misappropriates money, your clients will suffer damages. In addition, you may be held responsible.

There are no easy solutions to this problem, and there is no way to know absolutely whether you are making the right choice. There are many important decisions to make. Each person must look at the options available to him or her, weigh the relative risks, and make the best choices he or she can.

Adding an Assisting Attorney and/or Authorized Signer to your general or lawyer trust account is permitted regardless of the form of entity you use for practicing law.

## CLIENT NOTIFICATION

Once you have made arrangements with an assisting Attorney and/or Authorized Signer, the next step is to provide your clients with information about your plan. The easiest way to do this is to include the information in your retainer agreements and engagement letters. This provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement provides written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary.

## OTHER STEPS THAT PAY OFF

You can take a number of steps while you are still practicing to make the process of closing your office smooth and inexpensive. These steps include:

1. Making sure that your office procedures manual explains how to produce a list of client names and addresses for open files;
2. Keeping all deadlines and follow-up dates on your calendaring system;
3. Thoroughly documenting client files;
4. Keeping your time and billing records up to date;
5. Familiarizing your Assisting Attorney and/or Authorized Signer with your office systems;
6. Renewing your written agreement with the Assisting Attorney and/or Authorized Signer each year; and
7. Making sure you do not keep clients' original documents, such as wills or other estate plans. (See *Checklist for Lawyers Planning to Protect Clients' Interests in the Event of the Lawyer's Death, Disability, Impairment, or Incapacity* provided in this handbook.)

If your office is in good order, the Assisting Attorney will not have to charge more than a minimum of fees for closing your practice. Your law office will then be an asset that can be sold and the proceeds remitted to you or your estate. An organized law practice can be a valuable asset. In contrast, a disorganized practice requires a large investment of time and money and is less marketable.

## DEATH OF A SOLE PRACTITIONER: SPECIAL CONSIDERATIONS

If you authorize another lawyer to administer your practice in the event of your death, disability, impairment, or incapacity, that authority terminates when you die. The personal representative of your estate has the legal authority to administer your practice. He or she must be told about your arrangement with the Assisting Attorney and/or Authorized Signer and about your desire to have the Assisting Attorney and/or Authorized Signer carry out the duties of your agreement. The personal representative can then authorize the Assisting Attorney and/or Authorized Signer to proceed.

It is imperative that you have an up to date will nominating a personal representative (and alternates if the first nominee cannot or will not serve) so that probate proceedings can begin promptly and the personal representative can be appointed without delay. If you have no will, there may be a dispute among family members and others as to who should be appointed as personal representative. A will can provide that the personal representative shall serve without bond. Absent such a provision, a relatively expensive fiduciary bond may have to be obtained before the personal representative is authorized to act.

For many sole practitioners, the law practice will be the only asset subject to probate. Other property will likely pass outside probate to a surviving joint tenant, usually the spouse. This means that unless you keep enough cash in your law practice bank account, there may not be adequate funds to retain the Assisting Attorney and/or Authorized Signer or to continue to pay your clerical staff, rent, and other expenses during the transition period. It will take some time to generate statements for your legal services and to collect the accounts receivable. Your accounts receivable may not be an adequate source of cash during the time it takes to close your practice. Your Assisting Attorney and/or Authorized Signer may be unable to advance expenses or may be unwilling to serve without pay. One solution to this problem is to maintain a small insurance policy, with your estate as the beneficiary. Alternatively, your surviving spouse or other family members can be named as beneficiary, with instructions to lend the funds to the estate, if needed.

Mississippi law gives broad powers to a personal representative to continue a decedents' business to preserve its value, to sell or wind down the 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 that person to arrange for closure of your law practice. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time. (*See Will Provisions* provided in this handbook.) For an instructive and detailed will for a sole practitioner, see Thomas G. Bousquet, *Retirements of a Sole Practitioner's Law Practice*, 29 LAW ECONOMICS & MANAGEMENT 428 (1989); updated 33 *The Houston Lawyer* 37 (January/February 1996).

It is important to allocate sufficient funds to pay an Assisting Attorney and/or Authorized Signer and necessary secretarial staff in the event of disability, incapacity, or impairment. To provide funds for these services, consider maintaining a disability insurance policy in an amount sufficient to cover these projected office closure expenses.

## START NOW

We encourage you to select an attorney to assist you; follow the procedures outlined in this handbook; and call the Office of General Counsel for assistance. While not required we also

encourage you to report the name, address, and phone number of your Assisting Attorney to The Mississippi Bar on an annual basis. (*See Notice of Designated Assisting Attorney* provided in this handbook.)

This is something you can do *now*, at little or no expense, to plan for your future and protect your assets. Don't put it off – start the process today.

If you have any questions about this procedure, call the Office of General Counsel at 601-948-0568.

## WHAT IF? ANSWERS TO FREQUENTLY ASKED QUESTIONS

If you are planning to close your office or if you are considering helping a friend or colleague close his or her practice, you should think through a number of issues. How you structure your agreement will determine what the Assisting Attorney must do if the Assisting Attorney finds (1) errors in the files, such as missed time limitations, or (2) misappropriation of client funds.

Discussing these issues at the beginning of the relationship will help to avoid misunderstandings later when the Assisting Attorney interacts with the Planning Attorney's former clients. If these issues are not discussed, the Planning Attorney and the Assisting Attorney may be surprised to find that the Assisting Attorney (1) has an obligation to inform the Planning Attorney's clients about a potential malpractice claim or (2) may be required to report the Planning Attorney to The Mississippi Bar.

The best way to avoid these problems is to have a written agreement with the Planning Attorney and, when applicable, with the Planning Attorney's former clients. If there is no written agreement clarifying the obligations and relationships, an Assisting Attorney may find that the Planning Attorney believes the Assisting Attorney is representing the Planning Attorney's interests. At the same time, the former clients of the Planning Attorney may also believe that the Assisting Attorney is representing their interests. It is important to keep in mind that an attorney-client relationship can be established by the reasonable belief of a would-be client.

This section reviews some of these issues and the various arrangements that the Planning Attorney and the Assisting Attorney can make. All of these frequently asked questions, except Question 8, are presented as if the Assisting Attorney is posing the questions.

### **1. If the Planning Attorney is unable to practice and I am assisting with the office closure, must I notify the former clients of the Planning Attorney if I discover a potential malpractice claim against the Planning Attorney?**

The answer is largely determined by the agreement you have with the Planning Attorney and the Planning Attorney's former clients. If you do not have an attorney-client relationship with the Planning Attorney, and you are the new lawyer for the Planning Attorney's former clients (Successor Attorney), you must inform your client (the Planning Attorney's former client) of the error, and advise him or her to submit a claim to the Planning Attorney's professional liability insurance carrier and/or The Mississippi Bar, unless the scope of your representation of the client excludes actions against the Planning Attorney. If you want to limit the scope of your representation, do so in writing and advise your clients to get independent advice on the issues.

If you are the Planning Attorney's lawyer (Inventory Attorney), and not the lawyer for his or her former clients, you should discuss the error with the Planning Attorney and inform the Planning Attorney of his or her obligation to inform the client of the error. As the attorney for the Planning Attorney, you are obligated to follow the instructions of the Planning Attorney. You must also be careful that you do not make any misrepresentations. This situation could arise if the Planning Attorney refused to fulfill his or her obligation to inform the client and also instructed you not to tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client.

In most cases, the Planning Attorney will want to fulfill his or her obligation to inform the client. As the Planning Attorney's lawyer, you and the Planning Attorney can include a clause in your agreement that gives you (the Assisting Attorney) permission to inform the Planning Attorney's former clients of any malpractice errors. This would not be permission to represent the former clients on malpractice actions against the Planning Attorney. Rather, it would authorize you to inform the Planning Attorney's former clients that a potential error exists and that they should seek independent counsel.

**2. I know sensitive information about the Planning Attorney. The Planning Attorney's former client is asking questions. What information can I give the Planning Attorney's former client?**

Again, the answer is based on your relationship with the Planning Attorney and the Planning Attorney's clients. If you are the Planning Attorney's lawyer, you would be limited to disclosing only information that the Planning Attorney wished you to disclose. You would, however, want to make clear to the Planning Attorney's clients that you do not represent them and that they should seek independent counsel. If the Planning Attorney suffered from a condition of a sensitive nature and did not want you to disclose this information to the client, you could not do so.

**3. Since the Planning Attorney is now out of practice, does the Planning Attorney have malpractice coverage?**

When attorneys leave private practice, generally their liability coverage plan limits for the year that they leave are extended to cover claims that occur after they leave private practice. This extension of coverage is called Extended Reporting Coverage (ERC) or Tail Coverage. Contact the Planning Attorney's professional liability insurance carrier for the details regarding extended coverage.

**4. In addition to transferring files and helping to close the Planning Attorney's practice, I want to represent the Planning Attorney's former clients. Am I permitted to do so?**

Whether you are permitted to represent the former clients of the Planning Attorney depends on (1) whether the clients want you to represent them (2) who else you represent and (3) whether you were appointed as a Receiver for the Planning Attorney pursuant to the Rules of Discipline.

If you are representing the Planning Attorney, you cannot represent the Planning Attorney's former clients on any matter against the Planning Attorney. This would include representing the Planning Attorney's former clients on a malpractice claim, Bar complaint, or fee dispute against the Planning Attorney. If you do not represent the Planning Attorney, you are limited by conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undertaking representation or reviewing confidential information of a former client of the Planning Attorney.

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case to another lawyer. A referral is advisable if the matter is outside your area of expertise or if you do not have adequate time or staff to handle the case. In addition, if the

Planning Attorney is a friend, bringing a legal malpractice claim or fee claim against him or her may be a conflict under Miss. R. Prof. Conduct 1.7(b) and make you vulnerable to the allegation that you did not zealously advocate on behalf of your new client. To avoid this potential exposure, you should provide the client with names of other attorneys.

If you were appointed as Receiver pursuant to Miss. R. Disc. 11, the Rule prohibits you or your associates from becoming counsel for any parties in the cases and files inventoried. Miss. R. Disc. 11(d).

#### **5. What procedures should I follow for distributing the funds in the trust account?**

If your review or the Authorized Signer's review of the lawyer trust account indicates that there may be conflicting claims to the funds in the trust account, you should initiate a procedure for distributing the existing funds, such as a court-directed interpleader.

#### **6. If there is an ethical violation, must I tell the Planning Attorney's former clients?**

The answer depends on the relationships and upon the application of Miss. R. Prof. Conduct 8.3. Generally, the answer is (1) no, if you are the Planning Attorney's lawyer; (2) maybe, if you are not representing the Planning Attorney or the Planning Attorney's former clients; and (3) yes, if you are the attorney for the Planning Attorney's former clients.

If the Planning Attorney violated a rule of professional conduct and you are his or her lawyer, you are not obligated to inform the Planning Attorney's former clients of any ethical violations or report any of the Planning Attorney's ethical violations to The Mississippi Bar if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. Although you may have no duty to report, you may have other responsibilities. For example, if you discover that some of the client funds are not in the lawyer trust account as they should be, you, as the attorney for the Planning Attorney, should discuss this matter with the Planning Attorney and encourage the Planning Attorney to correct the shortfall. If the Planning Attorney does not correct the shortfall and you believe the Planning Attorney's conduct violates the rules of professional, you should withdraw from the representation pursuant to Miss. R. Prof. Conduct 1.16. If you are the attorney for the Planning Attorney and the Planning Attorney is deceased, you should contact the personal representative of the estate. If the Planning Attorney is alive but unable to function, you (or the Authorized Signer) may have to disburse the amounts that are available and inform the Planning Attorney's former clients that they have the right to seek legal advice.

If you are the Planning Attorney's lawyer, you should make certain that former clients of the Planning Attorney do not perceive you as their attorney. This may include informing them in writing that you do not represent them. *See* Miss. R. Prof. Conduct 4.3.

If you are a signer on the trust account and (1) you are not the attorney for the Planning Attorney and (2) you are not representing any of the former clients of the Planning Attorney, you may still have a fiduciary obligation to notify the clients of the shortfall, and you may have an obligation to report the Planning Attorney to The Mississippi Bar. *See* Miss. R. Prof. Conduct 8.3.

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about the shortfall and advise the client of available remedies. These remedies may include



(1) pursuing the Planning Attorney for the shortfall, (2) filing a claim with the Client Security Fund, (3) filing a claim with the Planning Attorney's professional liability insurance carrier, or (4) filing a Bar complaint with The Mississippi Bar. You also have an obligation under Miss. R. Prof. Conduct 8.3(a) to report the Planning Attorney to The Mississippi Bar. If you are a friend of the Planning Attorney, this is a particularly important issue. You should determine *ahead of time* whether you are prepared to assume (1) the obligation to inform the Planning Attorney's former clients of the Planning Attorney's ethical errors and (2) the duty to report the Planning Attorney to The Mississippi Bar if a violation occurs. If you do not want to inform your clients (the former clients of the Planning Attorney) about possible ethics violations, you must explain to your clients that you are not providing them with any advice on ethics violations of the Planning Attorney. You should advise the clients, in writing, to seek independent representation on these issues. Limiting the scope of your representation, however, does not eliminate your duty to report pursuant to Miss. R. Prof. Conduct 8.3(a).

**7. If the Planning Attorney stole client funds, do I have exposure to a Bar complaint against me?**

You do not have exposure to a Bar complaint for stealing the money, unless you in some way aided or abetted the Planning Attorney in the unethical conduct, or had joint responsibility for the trust account prior to the event rendering the Planning Attorney unable to continue practice, such as an existing business relationship.

Whether you have an obligation to inform the Planning Attorney's former clients of the misappropriation depends on your relationship with the Planning Attorney and the Planning Attorney's former clients. (See Question 6 above.)

If you are the new attorney for a former client of the Planning Attorney and you fail to advise the client of the Planning Attorney's ethical violations, you may be exposed to the allegation that you have violated your ethical responsibilities to your new client.

**8. What are the pros and cons of allowing someone to have access to my trust account? How do I make arrangements to give my Authorized Signer access?**

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, an Authorized Signer is able to transfer money from the trust account to pay appropriate fees, provide your clients with settlement checks, and refund unearned fees. *If* these arrangements are not made, the clients' money must remain in the trust account until a court allows access. This court order may be through an order pursuant to Miss. R. Disc. 11. This delay may leave the clients at a disadvantage, since settlement funds, or unearned fees held in trust, are often needed to hire a new lawyer.

On the other hand, the most important "con" of authorizing trust account access is your inability to control the person who has been granted access. An Authorized Signer with unconditional access has the ability to write trust account checks, withdraw funds, or close the account at any time, even if you are not dead, disabled, impaired, or otherwise unable to conduct your business affairs. It is very important to carefully choose the person you authorize as a signer and, when possible, to continue monitoring your accounts.



If you decide to have an Authorized Signer, decide whether you want to give (1) access only during a specific time period or when a specific event occurs or (2) access all the time. (See *The Duty to Plan Ahead* in this handbook.)

**9. The Planning Attorney wants to authorize me as a trust account signer. Am I permitted to also be the attorney for the Planning Attorney?**

Although this generally works out fine, the arrangement may result in a conflict of fiduciary interests. As an Authorized Signer on the Planning Attorney's trust account, you would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. This duty could be in conflict with your duty to the Planning Attorney if (1) you were hired to represent him or her on issues related to the closure of his or her law practice and (2) there were misappropriations in the trust account and the Planning Attorney did not want you to disclose them to the clients. To avoid this potential conflict of fiduciary interests, the most conservative approach is to choose one role or the other: be an Authorized Signer OR be an Assisting Attorney representing the Planning Attorney on issues related to the closure of his or her practice. (See Question 4 above.)

## CHECKLIST FOR PLANNING ATTORNEY

1. Make a list of all law firm bank accounts, including bank name, address, account signors and account numbers and location of safe deposit box.
2. Make a list of all passwords (i.e. banking, court websites, computer logins, etc.).
3. Add language to retainer agreements that state you have arranged for an Assisting Attorney to close your practice in the event of death, disability, incapacity or other inability to act.
4. Have a thorough and up to date office procedure manual that includes information on:
  - a. How to check for conflict of interest;
  - b. How to use the calendaring system;
  - c. How to generate a list of active clients and their contact information;
  - d. Where client ledgers are kept;
  - e. How the open/active files are organized;
  - f. How the closed files are organized and assigned numbers;
  - g. Where the closed files are kept and how to access them;
  - h. The office policy on keeping original documents of clients;
  - i. Where original client documents are kept;
  - j. Location of all bank account records (trust and operating);
  - k. How to access your voice mail and the access code; and
  - l. Where and how to access the post office box.
5. Make sure all file deadlines (including follow-up deadlines) are on your calendaring system.
6. Document your files.
7. Keep your time and billing records up to date.
8. Have a written agreement with an attorney who will close your practice that outlines the responsibilities involved in closing your practice.
9. Notify The Mississippi Bar with name of Assisting Attorney
10. Introduce Assisting Attorney to office staff and familiarize him or her with your office systems
11. Inform your spouse or closest living relative and personal representative of your estate of this agreement and how to contact the Assisting Attorney.
12. Renew your written agreement with your Assisting Attorney and/or Authorized Signer annually.
13. Review your retainer agreement each year to make sure that the name of your Assisting Attorney is current.

14. Fill out the Law Office List of Contacts practice aid provided in this handbook and make sure your Assisting Attorney has a copy.

## CHECKLIST FOR RECEIVING ATTORNEY

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trial, depositions, court appearances, etc.
2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances or discovery. Obtain permission for requesting the resetting of hearing dates. (If making these arrangements poses a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs)
3. Contact courts and opposing counsel immediately for files that require discovery or court appearances. Obtain resetting of hearing dates or extensions when necessary.
4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
5. Look for office procedure manual. Determine whether anyone has access to a list of clients with active files.
6. Determine whether the previous attorney stored files online. Locate the user name and password, retrieve the digital data, and arrange for cloud storage provider to close the account.
7. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney and/or pick up a copy of the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately.
8. For cases before administrative bodies or courts, obtain permission from the clients to submit a motion or order to withdraw the Planning attorney as attorney of record.
9. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
10. Select an appropriate date to check whether all cases have both a motion and order allowing withdrawal of the Planning Attorney or a Substitution of Attorney filed with the court.
11. Make copies of files for clients. Retain the Planning Attorney's original files. All clients should either pick up a copy of their files (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney.
12. Advise all clients where their closed files will be stored and whom they should contact in order to retrieve a closed file.
13. If the Planning Attorney was a sole practitioner, try to arrange for his or her phone number to have a forwarding number.
14. Contact the Planning Attorney's professional liability insurance carrier and/or any excess carrier, if applicable, about extended reporting coverage.

15. If you have authorization to handle the Planning 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 clients. Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due and/or any money in trust.
16. If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.
17. If your arrangement is to represent the Planning Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.

## SAMPLE FORMS

### AGREEMENT – FULL FORM (Sample – Modify as Appropriate)

The sample *Agreement – Full Form* beginning on the next page gives the Assisting Attorney the power to determine whether you are disabled, impaired, or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your business bank accounts (except your trust account) and to close your law practice. The agreement gives an Authorized Signer authority to sign on your trust accounts. (See *Caveat* below.) The agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

***Caveat:*** The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is an Authorized Signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Authorized Signer on the trust account. (See *The Duty to Plan Ahead* and *What If? Answers to Frequently Asked Questions*, in this handbook for more detailed information on these topics.)

An agreement authorizing someone to sign on bank accounts may not meet the banking institution's record keeping requirements. The Planning Attorney should consult his or her bank to complete the paperwork the institution requires for its records.

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated or impaired, you will need to modify this agreement. For a discussion of alternatives, See *The Duty to Plan Ahead, Access to the Trust Account* in this handbook.

## AGREEMENT TO CLOSE LAW PRACTICE

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

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

And: \_\_\_\_\_, hereinafter referred to as “Authorized Signer”

### **Purpose.**

The purpose of this Agreement to Close Law Practice (hereinafter “this Agreement”) is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney’s law practice due to death, disability, impairment, or incapacity.

### **Parties.**

The term *Assisting Attorney* refers to the attorney designated in the caption above or the Assisting Attorney’s alternate. The term *Planning Attorney* refers to the attorney designated in the caption above or the Planning Attorney’s representatives, heirs, or assigns. The term *Authorized Signer* refers to the person designated to sign on Planning Attorney’s trust account and to provide an accounting for the funds belonging to Planning Attorney’s clients.

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

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

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

Planning Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Planning Attorney’s law practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close Planning Attorney’s own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all the actions contemplated by this Agreement as fully and as completely as Planning Attorney could do personally if Planning Attorney were able. It is Planning Attorney’s specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Planning Attorney’s death, disability,

impairment, or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney's death, disability, impairment, or incapacity, but, instead, the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Planning Attorney's death, disability, impairment, or incapacity, Planning Attorney designates Assisting Attorney as signator, in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, except Planning Attorney's lawyer trust account(s). Planning Attorney's consent includes, but is not limited to:

- Entering Planning Attorney's office and using Planning Attorney's equipment and supplies, as needed, to close Planning Attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property comprising Planning Attorney's law office, including client files and records;
- Examining client files and records of Planning Attorney's law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that Planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the Clients;
- Filing notices, motions, and pleadings on behalf of clients when their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that Planning Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing Planning Attorney's clients with a final accounting and statement for services rendered by Planning Attorney, return of client funds, collection of fees on Planning Attorney's behalf or on behalf of Planning Attorney's estate, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney's law practice or any of its assets to find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney's lawyer trust account(s).

Assisting Attorney and Authorized Signer will not be responsible for processing or payment of Planning Attorney's personal expenses.



Planning Attorney's bank or financial institution may rely on the authorizations in this Agreement, unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

**Payment For Services.**

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

**Preserving Attorney-Client Privilege.**

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

**Assisting Attorney Is Attorney for Planning Attorney.**

**(Delete one of the following options as appropriate.)**

**Option 1:**

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the Mississippi Rules of Professional Conduct. Assisting Attorney has permission to inform the Planning Attorney's professional liability insurance carrier of errors or potential errors of Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or possible errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

**OR:**

**Option 2**

Assisting Attorney is not Attorney for Planning Attorney. While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the Planning Attorney's professional liability insurance carrier and/or the office of General Counsel to the Mississippi Bar of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or possible errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

**Authorized Signer Is Not Attorney for Planning Attorney.**

While fulfilling the terms of this Agreement, Authorized Signer is not the attorney for Planning Attorney. Authorized Signer has permission to inform Planning Attorney's present and former clients of any misappropriations in Planning Attorney's trust account and instruct them to obtain independent legal advice or to contact the Office of General Counsel for the Mississippi Bar.

**Providing Legal Services.**

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

**Providing Clients with Accounting.**

Authorized Signer and/or Assisting Attorney agree[s] to provide Planning Attorney's clients with a final accounting and statement for legal services of Planning Attorney based on Planning Attorney's records. Authorized Signer agrees to return client funds to Planning Attorney's clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

**Assisting Attorney's Alternate.**

**(Delete one of the following options as appropriate.)**

**Option 1:**

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints \_\_\_\_\_ as Assisting Attorney's alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Assisting Attorney's Alternate shall comply with the terms of this Agreement. Assisting Attorney's Alternate consents to this appointment, as shown by the signature of Assisting Attorney's Alternate on this Agreement.

**OR:**

**Option 2:**

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Assisting Attorney may appoint an alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney shall enter into an agreement with any such Assisting Attorney's Alternate, under which Assisting Attorney's Alternate consents to the terms and provisions of this Agreement.

**Authorized Signer's Alternate.**

**(Delete one of the following options as appropriate.)**

**Option 1:**

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints \_\_\_\_\_ as Authorized Signer's alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Authorized Signer's Alternate shall comply with the terms of this Agreement. Authorized Signer's Alternate consents to this appointment, as shown by the signature of Authorized Signer's Alternate on this Agreement.

**OR:**

**Option 2:**

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Authorized Signer may appoint an alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer shall enter into an agreement with any such Authorized Signer's Alternate, under which Authorized Signer's Alternate consents to the terms and provisions of this Agreement.

**Indemnification.**

Planning Attorney agrees to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Agreement, provided the actions or omissions of Assisting Attorney and Authorized Signer were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Assisting Attorney and Authorized Signer were assisting Planning Attorney with the closure of Planning Attorney's law practice. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

This indemnification provision does not extend to any acts, errors, or omissions of Assisting Attorney as attorney for the clients of Planning Attorney.

**Option to Purchase Practice.**

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

**Arranging to Sell Practice.**

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

**Fee Disputes to be Arbitrated.**

Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by an independent arbitrator.

### Termination.

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

If Assisting Attorney and/or Authorized Signer or their respective Alternates for any reason terminate this Agreement, or are terminated, Assisting Attorney and/or Authorized Signer or their respective Alternates shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney's behalf within 30 days of termination or resignation and (2) provide Planning Attorney with Planning Attorney's files, records, and funds.

*[Planning Attorney]*

[Date]

[illegible]

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name(s) of person(s)).

(SEAL)

NOTARY PUBLIC

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

\_\_\_\_\_  
*[Assisting Attorney]*

\_\_\_\_\_  
*[Date]*

STATE OF MISSISSIPPI    )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name(s) of  
person(s)).

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
*[Assisting Attorney's Alternate]*

\_\_\_\_\_  
*[Date]*

STATE OF MISSISSIPPI    )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name(s) of  
person(s)).

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_



## AGREEMENT – SHORT FORM

(Sample – Modify as Appropriate)

The sample *Agreement – Short Form* beginning on the next page includes authorization for the Assisting Attorney to sign on your business bank account (except the lawyer trust accounts) and to close your law practice. It authorizes the Authorized Signer to sign on your trust account. It does not include a provision for payment to the Assisting Attorney, a description of termination powers, consent to represent the Planning Attorney's clients, or other provisions included in the sample *Agreement - Full Form*.

**Caveat:** The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is an Authorized Signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Authorized Signer on the trust account. (See *The Duty to Plan Ahead* and *What If? Answers to Frequently Asked Questions*, in this handbook for more detailed information on these topics.)

An agreement authorizing someone to sign on bank accounts may not meet the banking institution's record keeping requirements. The Planning Attorney should consult his or her bank to complete the paperwork the institution requires for its records.

## CONSENT TO CLOSE OFFICE

This Consent to Close Office (hereinafter “this Consent”) is entered into between \_\_\_\_\_, hereinafter referred to as “Planning Attorney,” and \_\_\_\_\_, hereinafter referred to as “Assisting Attorney,” and \_\_\_\_\_, hereinafter referred to as “Authorized Signer.”

I, (*insert name of Planning Attorney*), authorize (*insert name of Assisting Attorney*), Assisting Attorney, and any attorney or agent acting on my behalf, to take all actions necessary to close my law practice upon my death, disability, impairment, or incapacity. These actions include, but are not limited to:

- Entering my office and using my equipment and supplies, as needed, to close my practice;
- Opening and processing my mail;
- Taking possession and control of all property comprising my law office, including client files and records;
- Examining client files and records of my law practice and obtaining information about any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients that I have given this authorization and that it is in their best interest to obtain other legal counsel;
- Copying my files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by my clients;
- Filing notices, motions, and pleadings on behalf of my clients when their interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected and informing them that I have given this authorization;
- Winding down the business affairs of my practice, including paying business expenses and collecting fees;
- Contacting my professional liability carrier concerning claims and potential claims.

I authorize (*insert name of Authorized Signer*), Authorized Signer, to sign checks on my trust accounts and provide an accounting to my clients of funds in trust.

My bank or financial institution may rely on the authorizations in this Consent, unless such bank or financial institution has actual knowledge that this Consent has been terminated or is no longer in effect.

For the purpose of this Consent, my death, disability, impairment, or incapacity shall be determined by evidence the Assisting Attorney deems reasonably reliable, including, but not limited to, communications with my family members or representative or a written opinion of one or more medical doctors duly licensed to practice medicine. Upon such evidence, the Assisting Attorney is relieved from any responsibility or liability for acting in good faith in carrying out the provisions of this Consent.



Assisting Attorney and Authorized Signer agree to preserve client confidences and secrets and the attorney client privilege of my clients and to make disclosure only to the extent reasonably necessary to carry out the purpose of this Consent. Assisting Attorney and Authorized Signer are appointed as my agents for purposes of preserving my clients' confidences and secrets, the attorney-client privilege, and the work product privilege. This authorization does not waive any attorney-client privilege.

**(Delete one of the following paragraphs as appropriate:)**

Assisting Attorney represents me and acts as my attorney in closing my law practice. Assisting Attorney has permission to inform the General Counsel of the Mississippi Bar of my errors or potential errors. Assisting Attorney has permission to inform my clients of any errors or potential errors and to instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

**OR:**

Assisting Attorney does not represent me and is not acting as my attorney in closing my law practice. While fulfilling the obligations of this Consent, Assisting Attorney has permission to inform the General Counsel of the Mississippi Bar of my errors or potential errors. Assisting Attorney may inform my clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform my clients of any ethics violations committed by me.

Authorized Signer is not my attorney. Authorized Signer may inform my clients of any misappropriations in my trust account and instruct them to obtain independent legal advice.

I, Planning Attorney, appoint Authorized Signer as signator, in substitution of my signature, on my lawyer trust account(s) upon my death, disability, impairment, or incapacity.

I understand that neither Authorized Signer nor Assisting Attorney will process, pay, or in any other way be responsible for payment of my personal bills.

I agree to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Consent, provided the actions or omissions of Assisting Attorney and Authorized Signer were in good faith and in a manner reasonably believed to be in my best interest. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

Assisting Attorney and/or Authorized Signer may revoke this acceptance at any time, and each has the power to appoint a new assisting attorney or authorized signer in Assisting Attorney's and/or Authorized Signer's place. My authorization and consent to allow Assisting Attorney and Authorized Signer to perform these and other services necessary for the closure of my law office do not require Assisting Attorney and/or Authorized Signer to perform these services. If Assisting Attorney and/or Authorized Signer revokes this acceptance, Assisting Attorney and/or Authorized Signer must promptly notify me.

*[Planning Attorney]*

*[Date]*

[illegible]

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name(s) of person(s)).

(SEAL) NOTARY PUBLIC

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

\_\_\_\_\_  
*[Assisting Attorney]* *[Date]*

[illegible]

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_. (name(s) of person(s)).

(SEAL) NOTARY PUBLIC

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

\_\_\_\_\_  
[Authorized Signer]

\_\_\_\_\_  
[Date]

[illegible]

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name(s) of person(s)).

(SEAL) NOTARY PUBLIC \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**POWER OF ATTORNEY – LIMITED**

I, \_\_\_\_\_, do hereby appoint \_\_\_\_\_ as my agent and attorney-in-fact for the limited purpose of conducting all transactions and taking any actions that I might do with respect to my law office bank account(s) and safe deposit box(es). I further authorize my banking institutions to handle my account(s) as directed by my attorney-in-fact and to give to the attorney-in-fact all rights and privileges that I would otherwise have with respect to my account(s) and safe deposit box(es). Specifically, I am authorizing my attorney-in-fact to sign my name on checks, notes, drafts, orders, or instruments for deposit; withdraw or transfer money to or from my account(s); make electronic fund transfers; receive statements and notices on the account(s); and do anything with respect to the account(s) that I would be able to do. I am also authorizing my attorney-in-fact to enter and open my safe deposit box(es), place property in the box(es), remove property from the box(es), and otherwise do anything with the box(es) that I would be able to do, even if my attorney-in-fact has no legal interest in the property in the box.

This Power of Attorney will continue until the banking institution receives my written revocation of this Power of Attorney or written instructions from my attorney-in-fact to stop honoring the signature of my attorney-in-fact.

This Power of Attorney shall not be affected by my subsequent disability or incapacity.

\_\_\_\_\_  
[Account Holder] [Date]

STATE OF MISSISSIPPI     )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (name(s) of person(s)).

(SEAL) \_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

## SPECIMEN SIGNATURE OF ATTORNEY-IN-FACT

The attorney-in-fact acknowledges that the signature below is his/her signature.

\_\_\_\_\_  
*[Attorney-in-Fact]*

\_\_\_\_\_  
*[Date]*

STATE OF MISSISSIPPI     )  
  ) ss.  
County of \_\_\_\_\_)

[Insert name of Attorney-in-Fact] personally appeared before me who, being duly sworn, did say and acknowledge that the foregoing signature is his/her signature.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL)

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

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

## LETTER OF UNDERSTANDING

TO: \_\_\_\_\_

I am enclosing a Power of Attorney in which I have named \_\_\_\_\_ as my attorney-in-fact. You and I have agreed that you will do the following:

1. Upon my written request, you will deliver the Power of Attorney to me or to any person whom I designate.
2. You will deliver the Power of Attorney to the person named as my attorney-in-fact (if more than one person is named, you may deliver it to either of them) if you determine, using your best judgment, that I am unable to conduct my business affairs due to disability, impairment, incapacity, illness, or absence. In determining whether to deliver the Power of Attorney, you may use any reasonable means you deem adequate, including consultation with my physician(s) and family members. If you act in good faith, you will not be liable for any acts or omissions on your part in reliance upon your belief.
3. If you incur expenses in assessing whether you should deliver this Power of Attorney, I will compensate you for the expenses incurred. You should show these signed directions to my Attorney-in-Fact along with records of expenses you incurred to claim reimbursement under this agreement.
4. You do not have any duty to check with me from time to time to determine whether I am able to conduct my business affairs. I expect that if I am unable to conduct my business affairs, you will be notified by a family member, friend, or colleague of mine.

\_\_\_\_\_  
*[Trusted Family Member or Friend/ Attorney-in-Fact]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Planning Attorney]*

\_\_\_\_\_  
*[Date]*

## NOTICE OF DESIGNATED ASSISTING ATTORNEY

I have an Assisting Inventory or Successor Attorney Agreement with another [other] Mississippi licensed attorney[s] in case of my death or a disability rendering me unable to practice law.

\_\_\_\_\_  
(Name of Assisting Inventory or Successor Attorney)

\_\_\_\_\_  
(Address of Assisting Inventory or Successor Attorney)

\_\_\_\_\_  
(Phone Number of Assisting Inventory or Successor Attorney)

\_\_\_\_\_My entire practice consists of my being an employee of a governmental entity.

\_\_\_\_\_  
(Name of governmental entity).

\_\_\_\_\_My entire practice consists of my being an employee of an entity that is not engaged in the private practice of law (i.e. in-house counsel).

\_\_\_\_\_  
(Name of private entity)

\_\_\_\_\_My entire practice is in a law firm (partnership, limited liability company, professional corporation, limited liability partnership) that has ongoing responsibility to the clients of its lawyers; I designate the law firm as successor.

\_\_\_\_\_  
(Name of law firm)

\_\_\_\_\_  
[Planning Attorney]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Assisting Attorney]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Alternate Assisting Attorney]

\_\_\_\_\_  
Date

Mail this form to:  
The Mississippi Bar  
P.O. Box 2168  
Jackson, MS 39225-2168

**WILL PROVISIONS**  
**(Sample – Modify as Appropriate)**

With respect to my law practice, my executor is expressly authorized and directed to carry out the terms of the Agreement to Close Law Practice I have made with Assisting Attorney on \_\_\_\_\_, [and/or with Authorized Signer on \_\_\_\_\_]; if that [these] Agreement[s] are not in effect, my executor is authorized to enter into [a] similar agreement[s] with other attorneys that my executor, in his or her sole discretion, may determine to be necessary or desirable to protect the interests of my clients and to close my practice.

**OR**

My executor is expressly authorized and directed to take such steps as he or she deems necessary or desirable, in my executor's sole discretion, to protect the interests of the clients of my law practice and to wind down or close that practice, including, but not limited to, selling of the practice, collecting accounts receivable, paying expenses relating to the practice, reconciling my trust account(s), refunding any unused trust balances owing to my clients, employing an attorney or attorneys to review my files, completing unfinished work, notifying my clients of my death and assisting them in finding other attorneys, and providing long-term storage of and access to my closed files.



**LETTER ADVISING THAT LAWYER IS UNABLE  
TO CONTINUE IN PRACTICE**  
(Sample – Modify as Appropriate)

Re:     *[Name of Case]*

Dear   *[Name]*:

Due to ill health, *[Affected Attorney]* is no longer able to continue practice. You will need to retain the services of another attorney to represent you in your legal matters. I will be assisting *[Affected Attorney]* in closing *[his/her]* practice. We recommend that you retain the services of another attorney immediately so that all your legal rights can be preserved.

You will need a copy of your legal file for use by you and your new attorney. I am enclosing a written authorization for your file to be released directly to your new attorney. You or your new attorney can forward this authorization to us, and we will release the file as instructed. If you prefer, you can come to *[address of office or location for file pick-up]* and pick up a copy of your file so that you can deliver it to your new attorney yourself.

Please make arrangements to pick up your file or have your file transferred to your new attorney by *[date]*. It is imperative that you act promptly so that all your legal rights will be preserved.

Your closed files will be stored in *[location]*. If you need a closed file, you can contact me at the following address and phone number until *[date]*:

---

<i>[Name]</i>	<i>[Address]</i>	<i>[Phone]</i>
---------------	------------------	----------------

After that time, you can contact *[Affected Attorney]* for your closed files at the following address and phone number:

---

<i>[Name]</i>	<i>[Address]</i>	<i>[Phone]</i>
---------------	------------------	----------------

You will receive a final accounting from *[Affected Attorney]* in a few weeks. This will include any outstanding balances that you owe to *[Affected Attorney]* and an accounting of any funds held in trust on your behalf by *[Affected Attorney]*.

On behalf of *[Affected Attorney]*, I would like to thank you for giving *[him/her]* the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

Sincerely,

*[Assisting Attorney]*

*[Firm]*

Enclosure

**LETTER ADVISING THAT LAWYER IS  
CLOSING HIS/HER OFFICE  
(Sample – Modify as Appropriate)**

Re:     *[Name of Case]*

Dear   *[Name]*:

As of *[date]*, I will be closing my law practice due to *[provide reason, if possible]*. I will be unable to continue representing you on your legal matters.

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

When you select your new attorney, please provide me with written authority to transfer your file to the new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to that attorney yourself.

It is imperative that you obtain a new attorney immediately. *[Insert appropriate language regarding time limitations or other critical time lines that client should be aware of.]* Please let me know the name of your new attorney or pick up a copy of your file by *[date]*.

I *[or insert name of the attorney who will store files]* will continue to store my copy of your closed file for seven years. After that time, I *[or insert name of other attorney, if relevant]* will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. *[If relevant, add: If you object to (insert name of attorney who will be storing files) storing my copy of your closed file, let me know immediately and I will make alternative arrangements.]*

If you or your new attorney need a copy of the closed file, please feel free to contact me. I will be happy to provide you with a copy.

Within the next *[fill in number]* weeks, I will be providing you with a full accounting of any funds held in my trust account on your behalf and payment due for any legal services rendered.

You will be able to reach me at the address and phone number listed on this letter until *[date]*. After that time, you or your new attorney can reach me at the following phone number and address:

---

*[Name]*

*[Address]*

*[Phone]*

Remember, it is imperative to retain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved.

I appreciate the opportunity to have provided you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

*[Attorney]*

[Firm]

**LETTER FROM FIRM OFFERING TO  
CONTINUE REPRESENTATION  
(Sample – Modify as Appropriate)**

Re: [Name of Case]

Dear [Name]:

Due to ill health, [Affected Attorney] is no longer able to continue representing you on your case(s). A member of this firm, [Name], is available to continue handling your case if you wish [him/her] to do so. You have the right to select the attorney of your choice to represent you in this matter.

If you wish our firm to continue handling your case, please sign the authorization at the end of this letter and return it to this office.

If you wish to retain another attorney, please give us written authority to release your file directly to your new attorney. If you prefer, you may come to our office and pick up a copy of your file and deliver it to your new attorney yourself. We have enclosed these authorizations for your convenience.

Since time deadlines may be involved in your case, it is imperative that you act immediately. Please provide authorization for us to represent you or written authority to transfer your file by [date].

I want to make this transition as simple and easy as possible. Please feel free to contact me with your questions.

Sincerely,

[Assisting Attorney]

Enclosures

I want a member of the firm of [insert law firm's name] to handle my case in place of [insert Affected Attorney's name].

---

[Client]

---

[Date]

## ACKNOWLEDGMENT OF RECEIPT OF FILE

I hereby acknowledge that I have received a copy of my file from the law office of *[Firm/Attorney Name]*.

---

*[Client Name]* PRINTED

---

*[Client Signature]*

---

*[Date]*

Return this authorization to:

*[Name]*

*[Address]*

*[Address]*

## AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize the law office of *[Firm/Attorney Name]* to deliver a copy of my file to my new attorney at the following address:

---

---

---

---

---

*[Client Name]* PRINTED

---

*[Client Signature]*

---

*[Date]*

Return this authorization to:

*[Name]*

*[Address]*

*[Address]*

## REQUEST FOR FILE

I hereby request that *[Firm/Attorney Name]* provide me with a copy of my file. Please send the file to the following address:

---

---

---

---

---

*[Client Name]* PRINTED

---

*[Client Signature]*

---

*[Date]*

Return this request to:

*[Name]*

*[Address]*

*[Address]*



## LAW OFFICE LIST OF CONTACTS

(Sample – Modify as Appropriate)

<b>ATTORNEY NAME:</b>		Social Security #:	
State Bar #		Federal Employer ID #	
State Tax ID #:		Date of Birth:	

Office Address:	
Office Phone:	
Home Address:	
Home Phone:	
Cell Phone	
<b>SPOUSE/PARTNER:</b>	
Name:	
Cell Phone:	
Employer:	
Employer Address:	
Work Phone:	
<b>OFFICE MANAGER:</b>	
Name:	
Home Address:	



Home Phone:	
Cell Phone:	
<b>PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, WEB SITES, ONLINE DATA STORAGE, VOICEMAIL, OTHER):</b>	
(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box or password storage program or device.)	
Name:	
Home Address:	
Home Phone:	
Cell Phone:	
<b>POST OFFICE OR OTHER MAIL SERVICE BOX(S):</b>	
Location:	
Box No.:	
Obtain Key From:	
Address:	
Phone:	
Other Signatory:	
Address:	
Phone:	
<b>LEGAL ASSISTANT/SECRETARY:</b>	

Name:	
Home Address:	
Home Phone:	
Cell Phone:	
<b>BOOKKEEPER:</b>	
Name:	
Home Address:	
Home Phone:	
Cell Phone:	
<b>LANDLORD:</b>	
Name:	
Address:	
Phone:	
Cell Phone:	
<b>PERSONAL REPRESENTATIVE:</b>	
Name:	
Address:	
Phone:	
Cell Phone:	

Work Phone:	
<b>ATTORNEY:</b>	
Name:	
Address:	
Phone:	
<b>ACCOUNTANT:</b>	
Name:	
Address:	
Phone:	
<b>ATTORNEY TO HELP WITH PRACTICE CLOSURE:</b>	
First Choice Name:	
Address:	
Phone:	
Second Choice Name:	
Address:	
Phone:	
Third Choice Name:	

Address:	
Phone:	
<b>LOCATION OF WILL AND/OR TRUST:</b>	
Access Will and/or Trust by Contacting:	
Address:	
Phone:	
<b>PROFESSIONAL CORPORATIONS:</b>	
Corporate Name:	
Date Incorporated:	
Location of Corporate Minute Book:	
Location of Corporate Seal:	
Location of Corporate Stock Certificate:	
Location of Corporate Tax Returns:	
Fiscal Year-End Date:	
Corporate Attorney:	
Address:	
Phone:	

<b>PROCESS SERVICE COMPANY:</b>	
Name:	
Address:	
Phone:	
Contact:	
<b>OFFICE-SHARER OR OF COUNSEL:</b>	
Name:	
Address:	
Phone:	
Name:	
Address:	
Phone:	
<b>OFFICE PROPERTY/LIABILITY COVERAGE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>OTHER IMPORTANT CONTACTS:</b>	

Reason for Contact:	
Name:	
Address:	
Phone:	
Reason for Contact:	
Name:	
Address:	
Phone:	
Reason for Contact:	
Name:	
Address:	
Phone:	
Reason for Contact:	
Name:	
Address:	
Phone:	
<b>GENERAL LIABILITY COVERAGE:</b>	
Insurer:	

Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>LEGAL MALPRACTICE PRIMARY COVERAGE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>LEGAL MALPRACTICE ADDITIONAL COVERAGE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>VALUABLE PAPERS COVERAGE:</b>	
Insurer:	
Address:	

Phone:	
Policy No.:	
Contact Person:	
<b>OFFICE OVERHEAD/DISABILITY INSURANCE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>HEALTH INSURANCE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Persons Covered:	
Contact Person:	
<b>DISABILITY INSURANCE:</b>	
Insurer:	
Address:	



Phone:	
Policy No.:	
Contact Person:	
<b>LIFE INSURANCE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>LIFE INSURANCE:</b>	
Insurer:	
Address:	
Phone:	
Policy No.:	
Contact Person:	
<b>WORKERS' COMPENSATION INSURANCE:</b>	
Insurer:	
Address:	
Phone:	

Policy No.:			
Contact Person:			
<b>CLOUD OR INTERNET-BASED STORAGE LOCATION(S):</b>			
Cloud Provider:		Account No.:	
Address:			
Phone:			
Location of Password: (if not included on page one)			
Address:			
Phone:			
Items Stored:			
<b>STORAGE LOCKER LOCATION(S):</b>			
Storage Company:		Locker No.:	
Address:			
Phone:			
Obtain Key from:			
Address:			
Phone:			

Items Stored:	
Where Inventory of Files Can Be Found:	
<b>SAFE DEPOSIT BOXES:</b>	
Institution:	
Box No.:	
Address:	
Phone:	
Obtain Key From:	
Address:	
Phone:	
Other Signatory:	
Address:	
Phone:	
Items Stored:	
<b>LEASES:</b>	

Item Leased:	
Lessor:	
Address:	
Phone:	
Expiration Date:	
<b>LAWYER TRUST ACCOUNT:</b>	
IOLTA:	
Institution:	
Address:	
Phone:	
Account No.:	
Other Signatory:	
Address:	
Phone:	
<b>INDIVIDUAL TRUST ACCOUNT(S):</b>	
Name of Client:	
Institution:	
Address:	
Phone:	
Account No.:	

Other Signatory:	
Address:	
Phone:	
<b>GENERAL OPERATING ACCOUNT:</b>	
Institution:	
Address:	
Phone:	
Account No.:	
Other Signatory:	
Address:	
Phone:	
<b>BUSINESS CREDIT CARD(S):</b>	
Institution:	
Address:	
Phone:	
Account No.:	
Other Signatory:	
Address:	
Phone:	

<b>MAINTENANCE CONTRACTS:</b>	
Item Covered:	
Vendor:	
Address:	
Phone:	
Expiration:	
<b>ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:</b>	
State of:	
Bar Address:	
Phone:	
Bar ID No:	

## FORMS FOR SUCCESSOR AND RECEIVER ATTORNEYS

The Form Pleadings on the next pages should be used by an Assisting Attorney who wishes to appointed as a Receiver pursuant to Miss. R. Disc. 11.

## FORM 1 - VERIFIED PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney]

for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

[Name of Petitioning Attorney],

Petitioning Attorney

### VERIFIED PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

COMES NOW [name petitioner], an attorney and a member of the Mississippi Bar in good standing, and petitions the Court to be appointed by the Court as the Attorney Receiver for [name affected attorney for whom receiver being sought]. That in support of this request, the Petitioner advises the Court as follows:

1. On or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, [affected attorney] [disappeared/became disabled/was disbarred or suspended] and is currently unable to practice law and is incapable of managing the affairs of [his/her] clients.

2. At the time of the occurrence, [affected attorney] was actively engaged in the practice of law, maintaining a law office at [street address], [city], Mississippi, in the County of \_\_\_\_\_.

3. At the time of the occurrence, [affected attorney] was a member of the Mississippi Bar, whose state bar number was [bar number]. That the attorney was also a member of the local [name county] county bar.

4. As a result of this occurrence [affected attorney] is incapable of managing the affairs of [his/her] law office and attending to [his/her] client's legal interests, wherein the [disappearance/disability/disbarment/suspension] of [affected attorney] constitutes an occurrence



which requires the appointment of an attorney receiver to act as custodian of the law practice of [affected attorney] pursuant Rule 11 of the Rules of Discipline for the Mississippi State Bar.

5. The petitioner, [petitioning attorney], is an attorney licensed to practice law in the state of Mississippi and a member in good standing of the Mississippi Bar, whose state bar number is [bar number]. The petitioner maintains [his/her] law office at [street address], [city], Mississippi.

6. The duties of an attorney receiver, should include the following:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the lawyer that it may be in their best interest to obtain replacement counsel;
- (c) apply for extension of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney receiver has been appointed;
- (f) arrange for the surrender or delivery of client's papers or property;
- (g) as approved by the court, take possession of all accounts subject to Miss. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

7. If the attorney receiver determines that conflicts of interest exist between the attorney receiver's clients and the clients of the Lawyer, the attorney receiver shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney receiver shall take no action with regard to those cases or files.

8. There is a necessity for the appointment of any attorney receiver to provide aid and assistance for the clients of [affected attorney]. A copy of this verified petition shall be served on [affected attorney], at [street address], [city], Mississippi, [zip code].

WHEREFORE, [petitioner] requests the Court to set this matter for hearing; to designate who is to receive notice of the hearing, and upon hearing the evidence on this matter appoint the petitioner, [petitioner], as attorney receiver to take possession of the files, records and the trust accounts of [affected attorney] and to facilitate and effectuate the proper transfer of files and records, to notify the clients of [affected attorney] with regard to obtaining replacement counsel, to file notices, motions and pleadings on pending cases that require immediate attention, to perform any other duties ordered by this Court, and to report back to the Court regarding [his/her] actions when the duties are completed, and for all other relief which is proper in the premises.

---

[Petitioner]

**I HEREBY AFFIRM**, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

---

[Petitioner]

**NOTES TO FORM:**

**If the attorney for whom you are seeking the petition has died, then refer to Form #2.**

## FORM 2 - VERIFIED PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

[Name of Petitioning Attorney],  
Petitioning Attorney

### VERIFIED PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

Comes now [name petitioner], an attorney and a member of the Mississippi Bar in good standing, and petitions the Court, to be appointed by the Court as the Attorney Receiver for [name attorney for whom receiver is being sought]. That in support of this request, the Petitioner advises the Court as follows:

1. On or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, [name deceased attorney] died a resident of [name county] County.
2. At the time of the death of [name deceased attorney], [he/she] was actively engaged in the practice of law, maintaining a law office at [state street address], [name city], Mississippi.
3. At the time of death [name deceased attorney], [he/she] was a member in good standing of the Mississippi Bar, whose state bar number was [bar number]. That the decedent was also a member of the local [name county] county bar.
4. As a result of the death of [name deceased attorney], [he/she] is incapable of managing the affairs of [his/her] law office and attending to [his/her] client's legal interests and the appointment of an attorney receiver to act as custodian of the law practice of [name deceased attorney] is necessary.

5. The petitioner, [name petitioner], is an attorney licensed to practice law in the state of Mississippi and a member in good standing of the Mississippi Bar, whose state bar number is [bar number]. The petitioner maintains [his/her] law practice at [state street address], [name city], Mississippi.

6. Prior to the demise of [name deceased attorney], the decedent executed an Attorney Receiver Designation on the \_\_\_day of \_\_\_\_, 20\_\_, and that said designation is on file with the Mississippi Bar, a copy of which is attached to this petition.

7. The duties of an attorney receiver should include the following:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney receiver has been appointed;
- (f) arrange for the surrender or delivery of client's papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Miss. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file of the client; or accept representation of the client with the agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section

8. If the attorney receiver determines that conflicts of interest exist between the attorney

receiver's clients and the clients of the Lawyer, the attorney receiver shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney receiver shall take no action with regard to those cases or files.

9. A personal representative has been appointed for the estate of [name deceased attorney]. The court appointed personal representative is [name personal representative]. A copy of this verified petition shall be served on [name of representative], at [state street address], [city], Mississippi, [zip code].

WHEREFORE, [name petitioner] requests the Court to set this matter for hearing; to designate who is to receive notice of the hearing, and upon hearing the evidence on this matter appoint the petitioner, [name petitioner] as attorney receiver to take possession of the files, records and trust accounts of [name deceased attorney] and to facilitate and effectuate the proper transfer of files and records, to notify the clients of [name of deceased attorney] with regard to obtaining replacement counsel, to file notices, motions and pleadings on pending cases that require immediate attention, to perform any other duties ordered by this Court, and to report back to the Court regarding [his/her] actions when the duties are completed, and for all other relief which is proper in the premises.

\_\_\_\_\_  
[Petitioner]

**I HEREBY AFFIRM**, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

\_\_\_\_\_  
[Petitioner]

**NOTES TO FORM:**

**If the attorney for whom you are seeking the petition has disappeared, is disabled or has been disbarred or suspended then refer to Form #1.**

FORM 3 - ORDER SETTING HEARING ON PETITION FOR APPOINTMENT  
OF ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

[Name of Petitioning Attorney],  
Petitioning Attorney

**ORDER SETTING HEARING ON PETITION  
FOR APPOINTMENT OF ATTORNEY RECEIVER**

COMES NOW [petitioner] who having filed a Petition for the Appointment as Attorney Receiver for [affected attorney for whom receiver is being petitioned] and submits [his/her] petition to the Court, and the Court finds that the Petition for the Appointment of an Attorney Receiver should be set for hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a hearing on said verified Petition for the Appointment of an Attorney Receiver shall be held in the \_\_\_\_\_ County Chancery Court on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, at \_\_\_\_ o'clock [AM/PM], at which time the decedent's personal representative, [personal representative], is ordered to appear. That said personal representative shall be served notice of this hearing by certified mail on the following individuals:

[List individuals and their addresses to whom notice should be served.]

ALL of which is ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_ .

\_\_\_\_\_  
CHANCELLOR

## FORM 4 - ORDER APPROVING THE APPOINTMENT OF AN ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

[Name of Petitioning Attorney],  
Petitioning Attorney

### ORDER APPROVING THE APPOINTMENT OF AN ATTORNEY RECEIVER

Comes now [petitioner], who having filed [his/her] Verified Petition for the Appointment of an Attorney Receiver, and the Court, having examined said petition and being duly advised in the premises, now finds that said petition should be granted and does hereby grant the same.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED BY THE COURT that the [death/disappearance/disability/disbarment/suspension] of [affected attorney] constitutes an occurrence which requires the appointment of an attorney receiver to act as custodian of [affected attorney]'s law practice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the duties of an attorney receiver shall include the following:

- (a) take the possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the Attorney that it may in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time

limits are involved and other legal counsel has not yet been obtained;

- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney receiver has been appointed;
- (f) arrange for the surrender or delivery of client' papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Miss. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT THAT [petitioner] is now appointed to serve as attorney receiver to act as the custodian of the law practice of [affected attorney] and to facilitate and effectuate the proper transfer and inventory of files, notifications to the clients of [affected attorney], and to perform any and all other duties as ordered by this Court.

All of which is ORDERED this \_\_\_\_\_ day of \_\_, 20\_\_.

---

CHANCELLOR



## FORM 5 - NOTICE ON HEARING ON PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

[Name of Petitioning Attorney],  
Petitioning Attorney

### NOTICE ON HEARING ON PETITION FOR APPOINTMENT OF ATTORNEY RECEIVER

The Petition for the Appointment of an Attorney Receiver is set for hearing by the \_\_\_\_\_ County Chancery Court on the \_\_ day of \_\_\_\_\_, at \_\_[AM/PM]. The Petition filed by [petitioner] accompanies this notice. You are requested to appear at this hearing and state any objections or concerns that you may have with regard to this petition.

This notice is being served on the following individuals by Certified Mail:

[List Individual and their Mailing Address]

\_\_\_\_\_  
[Petitioner]

[Petitioner]

[Petitioner's Bar Number]

[Address]

[Telephone]

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Petition for Appointment of Attorney Receiver and Notice of the Hearing on said petition has been duly served Certified Mail, postage prepaid, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, upon the following individuals.

[Insert names and addresses]

\_\_\_\_\_  
PETITIONER

FORM 6 - NOTICE OF APPOINTMENT OF ATTORNEY RECEIVER  
AND CLOSING OF LAW OFFICE

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**NOTICE OF APPOINTMENT OF ATTORNEY RECEIVER  
AND CLOSING OF LAW OFFICE OF [Affected Attorney]**

IN THE CHANCERY COURT OF \_\_\_\_\_, MISSISSIPPI

In the matter of the Request for the Appointment of an Attorney Receiver for [affected attorney for whom receiver is being petitioned]. Cause Number. \_\_\_\_\_. Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, [petitioner] filed a petition in the \_\_\_\_\_ County Chancery Court, for the appointment of an Attorney Receiver on behalf of [affected attorney for whom receiver is being petitioned]. That on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the \_\_\_\_\_ County Chancery Court appointed [attorney receiver] as Attorney Receiver for [affected attorney for whom Receiver is being petitioned].

This publication is to notify all of [affected attorney for whom receiver was appointed]'s clients, former clients, and any interested persons that their legal file is now in the possession of [receiver attorney], whose law office is located at [street address], [city], Mississippi, Phone number: [telephone number]; or email address [email address]

As Attorney Receiver on behalf of [affected attorney for whom receiver was appointed] it is my duty to proceed as follows:

- (a) Take possession of and examine the files and records of the practice, and obtain information as to any pending matters which may require attention;
- (b) Notify persons and entities who appear to be clients of [name attorney for whom

- receiver was appointed] that they need to obtain replacement counsel;
- (c) Apply for extensions of time pending the employment of replacement counsel by the client;
  - (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not been obtained;
  - (e) Give notice to appropriate persons and entities who may be affected, other than clients; that the attorney receiver has been appointed;
  - (f) Arrange for the surrender or deliver of clients' papers or property;
  - (g) As approved by the court, take possession of all trust accounts subject to MS. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
  - (h) Deliver the file to the client, make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
  - (i) Perform such other acts as the court may direct.

IT IS YOUR RESPONSIBILITY TO OBTAIN REPLACEMENT COUNSEL TO TIMELY PROCEED WITH YOUR CASE. YOU NEED TO OBTAIN REPLACEMENT COUNSEL IMMEDIATELY, AS VARIOUS STATUTES OF LIMITATION COULD RESULT IN THE DISMISSAL OF YOUR CAUSE OF ACTION OR THE DENIAL OF YOUR CLAIM. FAILURE TO PROMPTLY OBTAIN REPLACEMENT COUNSEL MAY RESULT IN LEGAL HARM TO YOUR CASE, THROUGH BEING DEFAULTED OR THROUGH OTHER ADVERSE LEGAL ACTION BEING TAKEN AGAINST YOU.

When you select your new attorney, please provide [receiver attorney] with written authority to transfer your file to the new attorney. In the alternative, you may also contact the law office of [receiver attorney] at [street address], [city], Mississippi, to make arrangements to pick up a copy of

your file. Please contact the office to make arrangements to retrieve your file prior to picking it up. You should call [telephone number] to make arrangements to pick up your file or if you have any questions with regard to this notification.

Dated at \_\_\_\_\_, Mississippi, this \_\_\_\_\_ day of 20\_\_\_\_,

---

[Receiver Attorney]  
Receiver Attorney for [affected attorney]

[Receiver Attorney]  
[Receiver Attorney's Bar Number]  
[Address]  
[Telephone]

**NOTES TO FORM:**

**It is suggested that this notice be published in the newspaper of general circulation at least once a week for each of three (3) successive weeks.**

## FORM 7 - NOTICE TO CLIENTS ON THE ROLE OF AN ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### NOTICE TO [AFFECTED ATTORNEY'S] CLIENTS ON THE ROLE OF AN ATTORNEY RECEIVER

An Attorney Receiver has the following duties and responsibilities:

- (a) Take possession of and examine the files and records of the practice, and obtain information as to any pending matters which may require attention;
- (b) Notify persons and entities who appear to be clients of [name attorney for whom receiver was appointed] that they need to obtain replacement counsel;
- (c) Apply for extensions of time pending the employment of replacement counsel by the client;
- (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not been obtained;
- (e) Give notice to appropriate persons and entities who may be affected, other than clients; that the attorney surrogate has been appointed;
- (f) Arrange for the surrender or delivery of clients' papers or property;
- (g) As approved by the court, take possession of all trust accounts subject to MS. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) Deliver the file to the client, make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) Do such other acts as the court may direct to carry out the purposes of this section.

PLEASE NOTE: The appointment of an Attorney Receiver does not create an attorney/client relationship between you and the Attorney Receiver.

## FORM 8 - NOTICE OF THE CLOSING OF THE LAW OFFICE

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### **NOTICE OF THE CLOSING OF THE LAW OFFICE OF [AFFECTED ATTORNEY]**

This is to advise that the law office of [affected attorney] closed on or about [date], due to [his/her] [death, disappearance, becoming disabled, disbarment/suspension].

On [date of appointment], the [name of county] Chancery Court appointed [attorney receiver] to act as Attorney Receiver on behalf of [affected attorney]. The role of the Attorney Receiver is enclosed herewith.

It is your responsibility to obtain replacement counsel to handle your case immediately. You may select any attorney that you wish. The appointment of an Attorney Receiver does not create an attorney/client relationship between you and the Attorney Receiver.

**FAILURE TO OBTAIN REPLACEMENT COUNSEL MAY RESULT IN LEGAL HARM TO YOUR CASE, THROUGH BEING DEFAULTED OR THROUGH OTHER ADVERSE LEGAL ACTION BEING TAKEN AGAINST YOU.**

When you have selected a replacement attorney, please provide [attorney receiver], Attorney Receiver, with written authority to transfer your file to the new attorney. If you prefer, you may pick up your file from the office of the Attorney Receiver at the address below. In order to pick up your file, you must show an acceptable form of photographic identification. Please contact the office to make arrangements to retrieve your file prior to picking it up.

[Attorney Receiver]

[address]

[telephone number.]



## FORM 9 - PETITION FOR DESTRUCTION OF CLOSED FILES BY ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

### IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### PETITION FOR DESTRUCTION OF CLOSED FILES BY ATTORNEY RECEIVER

COMES NOW [attorney receiver] as Attorney Receiver for [affected attorney], who being duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. [attorney receiver], was appointed by the Court as the Attorney Receiver of [affected attorney] on [date of appointment].

2. The Attorney Receiver has reviewed the files of [Attorney] and has determined that the following files are closed:

[list files to be destroyed]

3. More than ninety (90) days have lapsed since a notice to these clients has been sent to their last known address requesting that the client retrieve the file, or since the first publication of the Notice of Appointment of Attorney Receiver in a newspaper of general circulation in the county of the principal office of [affected attorney], and no response from these clients has been received.

4. The listed files have been reviewed for original documents that should not be destroyed under law. *[Note: See Attorney Receiver Guidebook for a discussion of such documents.]*

5. The Attorney Receiver believes the most appropriate method for the destruction of the files listed in Paragraph 2 above should be [commercial shredding with XYZ, burning, wiping or destruction of electronic media, etc.]. The Attorney Receiver believes that this method of destruction will assure protection of client confidentiality.

WHEREFORE, [attorney receiver], Attorney Receiver of [affected attorney] prays that the Court order that the listed files may be destroyed and for all other relief which is proper.

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

---

[Receiver Attorney]  
Receiver Attorney for [affected attorney]

[Receiver Attorney]  
[Receiver Attorney's Bar Number]  
[Address]  
[Telephone]

FORM 10 - ORDER ALLOWING DESTRUCTION OF CLOSED FILES BY  
ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER ALLOWING DESTRUCTION OF  
CLOSED FILES BY ATTORNEY RECEIVER**

COMES NOW [attorney receiver], as Attorney Receiver for [affected attorney], and submits [his/her] Petition for Destruction of Closed Files by Attorney Receiver, which petition is on file with the Court and a part of the Court's record.

The Court, having examined said petition and being duly advised, now finds that the facts stated therein are true and that the Court should allow the destruction of the closed files listed in the Petition.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the closed files of [affected attorney] listed in the Petition be destroyed.

All of which is ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CHANCELLOR

FORM 11 - PETITION FOR ALLOWANCE OF FEES AND EXPENSES  
OF ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**PETITION FOR ALLOWANCE OF FEES  
AND EXPENSES OF ATTORNEY RECEIVER**

COMES NOW [attorney receiver], as Attorney Receiver for [affected attorney], who being duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. [attorney receiver], was appointed by the Court as the Attorney Receiver of [affected attorney] on [date of appointment], and said role of Attorney Receiver has been fulfilled. The services of the Attorney Receiver included, among other things, [list services provided].

2. The Attorney Receiver has not received any payment for the services rendered on behalf of [affected attorney], and believes that just and reasonable compensation to the Attorney Receiver, for [his/her] services is the sum of \$\_\_\_\_\_ in that [he/she] has approximately \_\_\_\_\_ hours of services rendered in attending to [his/her] duties as Attorney Receiver, plus \$ \_\_\_\_\_ in expenses which have not been reimbursed (see Exhibit "A").

WHEREFORE, Attorney Receiver of [affected attorney] prays that the Court fix and determine the fees and expenses for the Attorney Receiver's services rendered in connection with said receivership, order the same to be paid, order payment to be a judgment against [affected attorney or estate of affected attorney], make said judgment a lien upon all assets of [affected attorney or estate of affected attorney] retroactive to the date of filing the verified petition for appointment of an Attorney

Receiver, and for all other relief which is proper in the premises.

\_\_\_\_\_  
[receiver attorney], as  
Receiver Attorney for [affected attorney]

[Receiver Attorney]  
[Receiver Attorney's Bar Number]  
[Address]  
[Telephone]

**STATE OF MISSISSIPPI**

**COUNTY OF \_\_\_\_\_**

Personally appeared before me, the undersigned authority in and for the jurisdiction above mentioned, Petitioner in the above and entitled cause, who, having been by me duly sworn, on his/her oath states that the foregoing statements are true to the best of the below signed Petitioner's knowledge, information and belief.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[receiver attorney]

Sworn to and subscribed before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary

### **CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the forgoing Petition for Allowance of Fees and Expenses for Attorney Receiver was mailed via U.S. Postal Service, this \_\_\_\_ day of \_\_\_, 20\_\_\_\_, to:

[List all individuals/entities for whom the Court has ordered notice be given. The Attorney, their guardian, their trustee, or the personal representative of their estate should be given notice.]

---

[receiver attorney]

FORM 12 - ORDER ALLOWING FEES AND EXPENSES OF ATTORNEY  
RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER ALLOWING FEES AND EXPENSES  
OF ATTORNEY RECEIVER**

THIS CAUSE having come on for hearing upon Petition of [attorney receiver] as Attorney Receiver for [affected attorney], who has filed [his/her] Petition for Allowance of Fees and Expenses for Attorney Receiver, and the Court, having examined said petition and being duly advised, and now finding that the facts stated therein are true, that the Court should fix and allow the fees and expenses for services performed by the Attorney Receiver, and that said fees and expenses should be allowed and ordered paid,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that there be, and hereby is, allowed to for [his/her] services as Attorney Receiver for [affected attorney], the sum of \$\_\_\_\_\_ that sum shall be paid, that this judgment is a lien upon all assets of [affected attorney or estate of affected attorney] retroactive to the date of filing the verified petition for appointment of an Attorney Receiver, that this judgment is subordinate to nonpossessory liens and security interests created prior to its taking effect, and that said judgment may be foreclosed upon in the manner prescribed by law.

SO ORDERED, ADJUDGED AND DECREED this the \_\_\_\_day of \_\_\_\_, 20\_\_.

\_\_\_\_\_  
CHANCELLOR

FORM 13 - PETITION FOR OBTAINING CONTROL OF TRUST ACCOUNTS  
BY ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**PETITION FOR OBTAINING CONTROL OF TRUST ACCOUNTS  
BY ATTORNEY RECEIVER**

COMES NOW, [attorney receiver] as Attorney Receiver for [affected attorney], who being  
duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. [Attorney Receiver], was appointed by the Court as the Attorney Receiver of\_  
[Attorney] on [date of appointment].
2. The Attorney Receiver has reason to believe that [name of financial institution having  
trust account] has trust account(s) subject to Mississippi Rules of Professional Conduct 1.15(a) of  
[affected attorney].
3. As Attorney Receiver, [attorney receiver] has been charged with the duty to take all  
appropriate actions regarding these accounts pursuant to the Rules of Discipline for the Mississippi  
State Bar Rule, Rule 11.

WHEREFORE, [attorney receiver] Attorney Receiver of [affected attorney] prays that the  
Court order [name of financial institution having trust account] to turn over control of all trust  
accounts subject to Mississippi Rules of Professional Conduct 1.15(a) to, [attorney receiver] as Attorney  
Receiver, for Attorney Receiver to take all appropriate actions regarding these accounts, and for all  
other relief which is proper in the premises.

\_\_\_\_\_  
[receiver attorney], as  
Receiver Attorney for [affected attorney]



**STATE OF MISSISSIPPI**

**COUNTY OF \_\_\_\_\_**

Personally appeared before me, the undersigned authority in and for the jurisdiction above mentioned, the within named, [attorney receiver], Petitioner in the above and entitled cause, who, having been by me duly sworn, on his oath states that the foregoing statements are true to the best of the below signed Petitioner's knowledge, information and belief.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[receiver attorney], Petitioner

Sworn to and subscribed before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary  
[Commission expiration date of notary]

[Notary official seal]

### CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the forgoing Petition for Obtaining Control of Trust Accounts by Attorney Receiver was mailed via U.S. Postal Service, this \_\_\_\_\_ day of, \_\_\_\_\_, 20\_ , to:

[List all individuals/entities for whom the Court has ordered notice be given. This should include, at a minimum, the affected financial institutions and the Attorney, their guardian, their trustee, or the personal representative of their estate.]

---

[receiver attorney]

**NOTES TO FORM:** In order to give those who are served with the petition an opportunity to object, the proposed order states that the petition was filed at least ten (10) days prior to the order being signed.)

FORM 14 - ORDER GRANTING CONTROL OF TRUST ACCOUNT(S) TO  
ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER GRANTING CONTROL OF TRUST ACCOUNT(S)  
TO ATTORNEY RECEIVER**

THIS CAUSE having come on for hearing upon Petition of [attorney receiver], as Attorney Receiver for [affected attorney], who has submitted [his/her] Petition to Obtain Control of Trust Accounts by Attorney Receiver, which Petition is on file with the Court and a part of the Court's record. The petition being filed ten (10) days or more prior the date of this Order and no objection having been filed, and the Court having examined said petition and being duly advised, now finding that the facts stated therein are true and that the Court should grant the Attorney Receiver control over all trust accounts subject to Mississippi Rule of Professional Conduct 1.15(a), it is therefore:

ORDERED, AJUDGED AND DECREED that\_\_\_\_[name of financial institution having trust account] transfer control of all trust accounts in the name of [affected attorney] to [Attorney Receiver] as Attorney Receiver, and for Attorney Receiver to take all appropriate actions with respect to such trust accounts.

So ordered, adjudged and decreed THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_,  
20 \_\_\_\_.

\_\_\_\_\_  
CHANCELLOR

FORM 15 - RECEIPT FOR CLIENT FILE

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

RECEIPT FOR CLIENT FILE

I, [name of client] of [client address], hereby acknowledge that I have received my file materials that were in the possession of my former attorney [affected attorney], from the offices of the [attorney receiver], Attorney Receiver. I understand that an attorney-client relationship has not been established with the Attorney Receiver and that the Attorney Receiver does not represent me. I understand that [affected attorney] has [died, disappeared, became disabled, was disbarred or suspended]. I have been notified that I should hire substitute counsel immediately to handle any ongoing legal matters in which I am involved.

Received this \_\_\_\_ day of\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Attorney's Client]

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Telephone Number

FOR OFFICE USE:

Form of ID Presented: \_\_\_\_\_

Date of Identification \_\_\_\_\_

Approved By: \_\_\_\_\_

## FORM 16 - ATTORNEY RECEIVER'S FINAL REPORT AND ACCOUNTING

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### ATTORNEY RECEIVER'S FINAL REPORT AND ACCOUNTING

COMES NOW [attorney receiver], as Attorney Receiver for [affected attorney], who being duly sworn upon oath, respectfully reports and shows the Court as follows:

1. CONFIDENTIALITY: This report includes confidential information that must be protected from unauthorized disclosure. Therefore, the following exhibits are filed unredacted under seal. The Court shall conduct closed proceedings regarding the contents of the same, and the Clerk, Reporter, and other officers of the Court shall take such steps as are reasonably necessary to maintain the confidentiality of the information provided.

2. APPOINTMENT: The Attorney Receiver was appointed by the Court as the Attorney Receiver of [affected attorney] on [date of appointment].

3. ADMINISTRATION:

a. Possession of [affected attorney]'s files and records. The Attorney Receiver took possession of all [affected attorney]'s files and records on \_\_\_\_\_, 20\_\_, and obtained information about pending matters in [affected attorney]'s law practice that required attention.

b. Notices to [affected attorney]'s clients. On \_\_\_\_\_, 20\_\_, the Attorney Receiver gave notice to obtain replacement counsel to the people and entities named in **Exhibit A**, attached hereto and incorporated herein, who appeared to have composed [affected attorney]'s clientele.

- c. Applications for extension of time. The Attorney Receiver filed applications for extensions of time pending employment of replacement counsel for the cases described by abbreviated caption and case number in **Exhibit B**, attached hereto and incorporated herein.
- d. Notices, motions and pleadings. The Attorney Receiver filed notices, motions and pleadings as described in **Exhibit C**, attached hereto and incorporated herein, where jurisdictional time limits were involved and other legal counsel had not yet been obtained.
- e. Notices third parties. The Attorney Receiver gave notice of administration of [affected attorney]'s law practice to the people and entities named in **Exhibit D**, attached hereto and incorporated herein, who appeared to be appropriate persons and entities to receive such notice.
- f. Surrender and delivery of paper and files. The Attorney Receiver surrendered or delivered to those people named in **Exhibit E**, attached hereto and incorporated herein, all of [affected attorney]'s papers and files that are shown in Exhibit E.
- g. Destruction of papers and files. The Attorney Receiver destroyed all of [affected attorney]'s papers and files that are shown in **Exhibit F**, attached hereto and incorporated herein, in conformity with The Mississippi Bar's Planning Ahead Manual.
- h. Possession of [affected attorney]'s trust accounts. The Attorney Receiver took possession of all of [affected attorney]'s trust accounts, subject to Prof. Cond. R. 1.15(a) and acted with respect to those accounts as shown in **Exhibit G** attached hereto and incorporated herein.
- i. Delivery of files to clients, referrals of clients to replacement counsel, and acceptance of representation. The Attorney Receiver delivered files to clients as

shown in **Exhibit H**; referred clients to replacement counsel as shown in **Exhibit I**; and accepted representation as shown in **Exhibit J**, all attached hereto and incorporated herein.

j. Compliance with Court directions. The Attorney Receiver carried out other acts as directed by the Court and described in summary in **Exhibit K** attached hereto and incorporated herein.

4. ACCOUNT: The Attorney Receiver attaches hereto and makes a part hereof as Exhibit L., a schedule showing the original inventory of [Affected Attorney]'s law practice and additional receipts received by the Attorney Receiver; Exhibit M, a schedule showing disbursements made by Attorney Receiver; and Exhibit N, a schedule showing disbursements made by Attorney Receiver; and Exhibit N, a schedule showing a recapitulation setting forth therein the total assets available for distribution to [Affected Attorney]'s claimants, the legatees and devisees entitled hereto.

WHEREFORE, [attorney receiver], as Attorney Receiver for [Affected Attorney], submits this affirmed final report and account and prays that after due notice as follows:

1. That this report and account may be settled and allowed by the Court and the amounts stated herein approved by the Court;
2. The distributions heretofore made should be confirmed;
3. The Court designate, determine and confirm the persons to whom final distribution is to be made and the amounts to which each person is entitled;
4. The Court enter an order authorizing the Attorney Receiver to distribute the balance of the assets available for final distribution to the respective legatees and devisees; and
5. The Court grant such additional relief as may be just and proper in the premises.

---

[receiver attorney], as  
Receiver Attorney for [affected attorney]

[Attorney Receiver] affirms, under the penalties for perjury, that the above and foregoing representations are true.

\_\_\_\_\_  
[Attorney Receiver Signature]

Mississippi Bar No. \_\_\_\_\_



## **EXHIBIT A**

### **PEOPLE AND ENTITIES TO WHOM COUNSEL WAS GIVEN TO OBTAIN REPLACEMENT COUNSEL**

## **EXHIBIT B**

### **APPLICATIONS FOR EXTENSIONS OF TIME PENDING EMPLOYMENT OF REPLACEMENT COUNSEL**

## **EXHIBIT C**

**NOTICES, NOTIONS AND PLEADINGS WHERE  
JURISDICTIONAL TIME LIMITS WERE INVOLVED AND  
OTHER LEGAL COUNSEL HAD NOT YET BEEN OBTAINED**

**EXHIBIT D**

**NOTICE TO THIRD PARTIES OF ADMINISTRATION OF  
[AFFECTED ATTORNEY]'S LAW PRACTICE**

## **EXHIBIT E**

### **SURRENDER AND DELIVERY OF PAPERS AND FILES**

## **EXHIBIT F**

### **DESTRUCTION OF PAPERS AND FILES**

## EXHIBIT G

### POSSESSION OF [AFFECTED ATTORNEY]'S TRUST ACCOUNTS

The Attorney Receiver took possession of [affected attorney]'s trust accounts and acted with respect to those accounts as shown in this exhibit. The funds in those trust accounts were the property of the clients identified in the trust account records as shown in this exhibit, except for those funds that were deposited by [affected attorney] initially as unearned fees and that were later earned, but not withdrawn, by [affected attorney]. All earned fee deposits have been withdrawn and deposited in the general operating checking account established for [affected attorney]'s law practice as shown in **Exhibit L**. The following account is given for the trust accounts.

Client	Client Opening Balance	Receipts	Disbursements	Closing Client Balance	Trust Account Balance

## **EXHIBIT H**

### **DELIVERY OF FILES TO CLIENTS**



## **EXHIBIT I**

### **REFERRALS OF CLIENTS TO REPLACEMENT COUNSEL**

## **EXHIBIT J**

### **ACCEPTANCE OF REPRESENTATION**

## **EXHIBIT K**

### **COMPLIANCE WITH COURT DIRECTIONS**

**EXHIBIT L**

**INVENTORY OF ASSETS USED IN [AFFECTED ATTORNEY]'S  
LAW PRACTICE AND ADDITIONAL RECEIPTS RECEIVED BY  
THE ATTORNEY RECEIVER**

## **EXHIBIT M**

### **DISBURSEMENTS MADE BY ATTORNEY RECEIVER**

## EXHIBIT N

### RECAPITULATION

Beginning Balance, as shown in the Inventory of assets filed on \_\_\_\_\_, 20\_\_\_\_  
(the "Inventory") \$\_\_\_\_\_.

Total Receipts + \$\_\_\_\_\_

Total Disbursements - \$ \_\_\_\_\_

\_\_\_\_\_  
\$ \_\_\_\_\_

Balance of Attorney Receiver's fee - \_\_\_\_\_

\_\_\_\_\_

Total Recapitulation \$ \_\_\_\_\_

## FORM 17 - AFFIDAVIT IN LIEU OF VOUCHERS

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### AFFIDAVIT IN LIEU OF VOUCHERS

[attorney receiver], as Attorney Receiver for [affected attorney], affirms and states that the disbursements listed in said final accounting covering the period designated therein were paid from the assets of [affected attorney]'s law practice, and a receipt or voucher for each item is held in the records of the Attorney Receiver.

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

\_\_\_\_\_  
[Receiver Attorney]

Receiver Attorney for [affected attorney]

[attorney receiver] affirms, under the penalties for perjury, that the above and foregoing representations are true.

\_\_\_\_\_  
[Attorney Receiver Signature]

Mississippi Bar No. \_\_\_\_\_

FORM 18 - ORDER SETTING FINAL REPORT AND ACCOUNTING FOR HEARING

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER SETTING FINAL REPORT AND ACCOUNTING FOR HEARING**

COMES NOW [attorney receiver], as Attorney Receiver for [affected attorney], and submits the affirmed Final Report and Accounting,

And the Court, having examined said report and being duly advised in the premises, now finds that the following people and entities are entitled to notice of the Final Report and Accounting:

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Final Report and Accounting is set for hearing on \_\_\_\_\_, 20\_\_, at \_\_:\_\_ [AM/PM], and the Attorney Receiver is directed to issue notice to the people and entities named above by the form of notice that is attached to this order as an Exhibit.

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

\_\_\_\_\_  
CHANCELLOR



## FORM 19 - NOTICE OF HEARING ON FINAL REPORT AND ACCOUNTING

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### NOTICE OF HEARING ON FINAL REPORT AND ACCOUNTING

Notice is hereby given that [attorney receiver], as Attorney Receiver, for [affected attorney], filed a Final Report and Account of the administration of [affected attorney]'s law practice in the office of the Clerk of the \_\_\_\_\_ County Chancery Court, and that the same will come up for examination and action in a hearing set for that Court to consider the Final Report and Account on \_\_\_\_\_, 20\_\_, at \_\_:\_\_ [AM/PM], in the \_\_\_\_\_ Court, located at [street address], [city], Mississippi. All persons and entities interested in the Final Report and Account wishing to be heard in the hearing are required to appear in said Court and show cause, if any there be, why said report and account should not be approved.

\_\_\_\_\_  
[receiver attorney], as  
Receiver Attorney for [affected attorney]

FORM 20 - ORDER APPROVING ATTORNEY RECEIVER'S FINAL REPORT  
AND ACCOUNTING

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

ORDER APPROVING ATTORNEY RECEIVER'S  
FINAL REPORT AND ACCOUNTING

This cause came to be heard on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, upon the final report and account filed by [attorney receiver] as Attorney Receiver for [affected attorney],

And it appearing that no objections were filed thereto and the Court being fully advised in the premises, now finds as follows:

1. Due notices of the filing of the report and account and of the hearing on the same were given to all persons interested in the estate and the same are now properly before the Court for final action.

2. The Attorney Receiver was appointed by the Court as the Attorney Receiver of [affected attorney] on [date of appointment].

3. The matters and things stated in the said account and petition are true and the Attorney Receiver has accounted for all of the files, papers, clients, trust accounts and assets of [affected attorney]'s law practice coming into the Attorney Receiver's hands.

4. The Attorney Receiver's distributions of files, papers, clients, trust accounts and assets of [affected attorney]'s law practice described in the Attorney Receiver's report and accounting should be confirmed.

5. The following persons are entitled to receive the following amounts:

Name

Amount

\_\_\_\_\_

\_\_\_\_\_

_____	_____
_____	_____
_____	_____

and distribution should be made to the above named persons as set forth above and as indicated in the said final account.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The final report and account of the Attorney Receiver is hereby in all things approved, settled, and confirmed.

2. The distributions of files, papers, clients, trust accounts and assets of [affected attorney]'s law practice described in the Attorney Receiver's report and accounting are hereby confirmed and approved.

3. The Attorney Receiver is hereby directed to distribute the balance of the files, papers, clients, trust accounts and assets of [affected attorney]'s law practice as follows:

<u>Name</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

4. The Attorney Receiver is hereby directed to file a supplemental report showing that the Attorney Receiver has complied with the terms of this order and that the Attorney Receiver has in all things carried out the provisions of this decree.

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

\_\_\_\_\_  
CHANCELLOR

## FORM 21 - SUPPLEMENTAL REPORT OF DISTRIBUTION

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

### SUPPLEMENTAL REPORT OF DISTRIBUTION

[attorney receiver], as Attorney Receiver for [affected attorney] affirms and respectfully shows the Court as follows:

1. Pursuant to the Order Approving' Attorney Receiver's Final Report and Accounting entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Attorney Receiver made distribution as therein directed and attaches hereto copies of checks evidencing such distribution as set forth in the decree.

2. The Attorney Receiver has in all things carried out and performed the acts required by the Court's order.

WHEREFORE, [attorney receiver], as Attorney Receiver for [affected attorney], respectfully prays that this supplemental report of distribution be approved and that the Attorney Receiver be released and discharged from any further liabilities, duties, and responsibilities as such Attorney Receiver.

\_\_\_\_\_  
[receiver attorney], as  
Receiver Attorney for [affected attorney]

[Attorney Receiver] affirms, under the penalties for perjury, that the above and foregoing representations are true.

\_\_\_\_\_  
[Attorney Receiver Signature]  
Attorney Bar No. \_\_\_\_\_

FORM 22 - ORDER APPROVING SUPPLEMENTAL REPORT OF  
DISTRIBUTION AND DISCHARGING ATTORNEY RECEIVER

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER APPROVING SUPPLEMENTAL REPORT  
OF DISTRIBUTION AND DISCHARGING ATTORNEY RECEIVER**

COMES NOW [attorney receiver], as Attorney Receiver for [affected attorney] and submits  
the affirmed Supplemental Report of Distribution and petition for discharge,

And the Court, having examined the report and being duly advised in the premises, now  
finds that the allegations contained in the report are true and that the report should be granted and  
the estate terminated and the Attorney Receiver discharged.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the  
Supplemental Report of Distribution filed by [attorney receiver], as Attorney Receiver for [affected  
attorney], is in all respects approved and that [attorney receiver], as Attorney Receiver, is hereby  
discharged from any further liability, responsibility, and duties.

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

\_\_\_\_\_  
CHANCELLOR

FORM 23 - PETITION FOR ALLOWANCE OF INTERIM FINAL FEES AND  
REIMBURSEMENT OF EXPENSES

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

PETITION FOR ALLOWANCE OF INTERIM FINAL  
FEES AND REIMBURSEMENT OF EXPENSES

COMES NOW [attorney receiver], the court-appointed Attorney Receiver of [affected attorney], who being duly sworn upon [his/her] oath, respectfully petitions the Court as follows:

1. Your petitioner was appointed Attorney Receiver over [affected attorney] on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by this Court.

2. Upon being appointed Attorney Receiver the petitioner proceeded in accordance with the provisions of Mississippi Rules of Professional Responsibility and performed the following duties:

- (a) took possession of and examined over [state number] files and miscellaneous records of the law practice, and obtained information as to any pending matters which required attention;
- (b) notified persons and entities who appeared to be clients of the Lawyer that they needed to obtain replacement counsel;
- (c) applied for extensions of time pending employment of replacement counsel by the client on cases requiring the same;
- (d) filed notices, motions and pleadings on behalf of the client, where jurisdictional time limits were involved and other legal counsel had not yet been obtained;
- (e) gave notice to appropriate persons and entities who may be affected, other than clients, that an attorney receiver had been appointed;

- (f) arranged for the surrender or delivery of client's papers or property and have tendered over [state number] files directly to clients or their new legal counsel;
- (g) pursuant to the court's order, took possession of all trust accounts subject to Miss. Prof. Cond. R. 1.15(a), and took appropriate actions with respect to such accounts;
- (h) delivered files to the client and made referrals to replacement counsel with the agreement of the client.

3. In addition to the above listed duties performed, your petitioner rendered the following additional services as Attorney Receiver: [describe special services which situation required you to render].

4. The petitioner to date has incurred the following expenses in order to perform the duties required by this appointment;

- (a) Postage in the total amount of \$\_\_\_\_\_;
- (b) Certified Mailings in the total amount of \$\_\_\_\_\_;
- (c) Publication fees in the total amount of \$\_\_\_\_\_;
- (d) Xeroxing Expenses in the total amount of \$\_\_\_\_\_;
- (e) Long distance phone charges and faxing expenses' in the total amount of \$\_\_\_\_\_.

The petitioner now requests to be reimbursed for the above listed expenses in the total amount of \$\_\_\_\_\_.

5. The petitioner to date has expended [state number] hours with regard to the services rendered as Attorney Receiver for [affected attorney] and has received no compensation to date. That your petitioner would request that the Court order an interim payment of these fees pending finalization of this matter. [That the petitioner has attached to this petition as "Exhibit A" an itemized time schedule and listing of the expenses incurred to date.]

WHEREFORE, [attorney receiver] as Attorney Receiver over [affected attorney] prays that the Court order payment of the expenses incurred in this matter along with payment of interim fees for the services rendered to date, and for all other relief which is proper in the premises.

\_\_\_\_\_  
[attorney receiver]  
Attorney Bar No. \_\_\_\_\_

I hereby affirm, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

\_\_\_\_\_  
[attorney receiver]  
Attorney Bar No. \_\_\_\_\_

**NOTES TO FORM:**

**If attorney receiver was ordered to take possession of affected practitioner's operating business account, then you may want to consider requesting that interim fees and expenses be ordered paid from that account. Consider inserting the following paragraph:**

6. That the attorney receiver was previously ordered by the Court to take possession of the operating business account of [affected attorney] held with [bank]. That this business account has a current balance of [state amount] from which these fees and reimbursement of expenses can be paid, and the petitioner would request that the court order payment from this account.



FORM 24 - ORDER OF ALLOWANCE OF INTERIM FEES AND  
REIMBURSEMENT OF EXPENSES

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

IN THE MATTER OF

[Name of Affected Attorney  
for whom Receiver is being Petitioned]

MSB No. \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

**ORDER OF ALLOWANCE OF INTERIM FEES  
AND REIMBURSEMENT OF EXPENSES**

COMES NOW [attorney receiver], Attorney Receiver for [affected attorney] and submits this verified Petition for Interim Fees and Reimbursement of Expenses, which petition is on file with the Court and a part of the Court's record.

The Court, having examined the petition and being duly advised, now finds that the facts stated in the petition are true and that numerous duties have been performed by the Attorney Receiver on behalf of [affected attorney] and expenses incurred in performing those duties.

That an interim fee should be ordered along with reimbursement of expenses incurred by the Attorney Receiver. That a just and reasonable fee for the services rendered by [attorney receiver] as Attorney Receiver for [affected attorney] is \$\_\_\_\_\_. That in addition the Attorney Receiver is to be reimbursed expenses in the total amount of \$\_\_\_\_\_. That the total amount of \$\_\_\_\_\_ is allowed and ordered to be paid to the Attorney Receiver, [attorney receiver].

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

\_\_\_\_\_  
**CHANCELLOR**

**ETHICS OPINION NUMBER 254  
OF THE MISSISSIPPI BAR  
RENDERED DECEMBER 8, 2005**

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on the following question:

How long should Mississippi attorneys retain files before  
either returning them to the client or destroying the files?

Almost thirty years ago, the American Bar Association Committee on Ethics and Professional Responsibility was asked a similar question and observed that how to deal with the burden of storing retired and inactive files “is primarily a question of business management and not primarily a question of ethics or professional responsibility.” Informal Op. 1384, ABA Comm. On Ethics and Prof. Resp. (March 14, 1977). ABA Informal Opinion 1384 also noted that questions about the ownership of or proprietary interests in the contents of lawyers’ files were usually questions of law. Nothing has occurred in the intervening years to undermine those observations. Yet questions persist.

The Preamble to the Mississippi Rules of Professional Conduct posits:

Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

ABA Informal Opinion 1384 recognized that the question of preservation of lawyers’ files presented such a need for a balancing of competing interests:

A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services.

But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyers’ files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed, to the clients’ detriment.

Neither the rules of professional ethics then in effect nor previous opinions of the ABA committee directly dealt with the question, Opinion 1384 observed before going on to offer this general guidance:

We cannot say that there is a specific time during which a lawyer must preserve all files and beyond which he is free to destroy all files.

Good common sense should provide answers to most questions that arise.

Having said that, Opinion 1384 went on to suggest eight specific matters that lawyers should take into consideration in making decisions about preserving files. We will return to this list in due time.

The Mississippi Bar adopted ABA Informal Opinion 1384 a few years later when it issued advice in Opinion No. 98 (Oct. 5, 1984) to a lawyer who proposed to destroy old files of a deceased lawyer. Thus, and in a situation involving a lawyer dealing with the files of a deceased lawyer, a Mississippi lawyer must follow the guidelines adopted in Opinion No. 98 of the Mississippi Bar and suggested in ABA Informal Opinion 1384, at least insofar as such guidelines have not been superceded by subsequent rules changes or opinions.

The question presently posed to the Committee is much broader than that involving the files of a deceased lawyer addressed in Opinion No. 98. Rather than leaving lawyers to rely on “good common sense,” in the words of ABA Informal Opinion 1384, the Committee is asked to devise “bright line” rules fixing a time by which a lawyer should return a file to a client and a time by which the lawyer may destroy the file. These questions involve issues that go beyond the jurisdiction of the Committee to interpret the Mississippi Rules of Professional Conduct. Nevertheless, the Committee is bound to provide guidance on such matters to the extent that it can do so without exceeding its authority. The analysis, like the Committee’s authority, begins with the Mississippi Rules of Professional Conduct.

Only four provisions of the Mississippi Rules of Professional Conduct can be said to address the preservation of client files in any direct manner. Rule 1.6(a) requires lawyers to maintain the confidentiality of information related to clients. Rule 1.15 provides direction for safekeeping the property of others. Rule 1.16(d) addresses termination of representation and touches on disposition of files. Rule 1.17(b)(3) mentions files in the context of the sale of a law practice.

It is axiomatic that in carrying out decisions about preserving or destroying material in client files, a lawyer should strictly observe the confidentiality requirement of Rule 1.6. The lawyer's or law firm's policies and procedures concerning storage, access and method of destruction should be designed to maintain the confidentiality required by Rule 1.6(a). Of course, a file may contain material that is not subject to this rule, but good practice would suggest that the entire file be maintained in such a way as to satisfy Rule 1.6.

Maintaining the confidentiality of client information was a focus of the Mississippi Bar's guidance in Opinion No. 98 (Oct. 5, 1984) and Opinion No. 114 (Jan. 29, 1986) concerning destruction of files of a deceased lawyer. Those opinions require that a lawyer representing the estate of a deceased lawyer review the decedent's files, but only insofar as necessary to determine the identity of the client, and then give the client notice of the planned destruction. Opinion No. 98 holds that if the lawyer is unable to contact the client, the lawyer is then to "examine the contents of the file and remove therefrom any documents or other things that may be of value to the client or the client's estate in the future." This opinion does not suggest what is to be done with these "documents or things that may be of value." For that, one must return to the Rules.

Rule 1.15 concerns property of clients or others being held by a lawyer and sets out the only specific file preservation period in the Rules of Professional Conduct. Rule 1.15(a), familiar to most lawyers as the rule governing trust accounts, requires that a lawyer:

hold property of clients and or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account.... Other 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 seven years after termination of the representation.

It should be noted that this rule applies not only to trust account records, but also to records of "other property" held by a lawyer. Thus, a lawyer has a duty to keep records of the property of others that the lawyer holds, and to keep such records for a period of seven years after termination of the representation. In providing for destruction of these records, the lawyer should review each matter individually because the time of "termination of the representation" can vary from case to case.

This preservation of a lawyer's records of the property the lawyer holds is, however, only a secondary focus of Rule 1.15. The heart of the rule is the requirement that the lawyer "appropriately safeguard[]" the property of others. The Comment to Rule 1.15 begins with the sentence: "A lawyer should hold property of others with the care required of a professional fiduciary." As noted above, Opinion No. 98 recognized that a lawyer has no duty to maintain files permanently. But, focused as it was on maintaining the confidentiality of client information, Opinion No.98 may have appeared to suggest that the lawyer has a duty to determine what items the client "may reasonably expect" the lawyer to preserve, and then preserve those items indefinitely. Opinion No. 114 attempted to clarify this issue and in so doing set out what we described in Opinion No. 234 (Sept. 19, 1996) as "[t]he general rule of an attorney's obligation to maintain a client's file:"

Certainly the files must be maintained by someone so long as there is unfinished business relating to the representation. Beyond that, there is a balancing between the client's expectations that valuable and potentially useful materials in the file will not be destroyed and the costs that storage imposes on the lawyer.

Further elaborating the limitations on the lawyer's duty to safeguard client property, Opinion No. 234 derived from Opinion No. 98 and Rule 1.15 the principle that once unfinished business regarding the representation is concluded the attorney only has an obligation to preserve and protect the client's original documents and such "valuable and useful information [that is] not otherwise available to the [client]."

Opinion No. 234 goes on to provide a clear and direct answer for most of the cases presented the question under consideration, an answer that also synthesizes earlier ethics opinions of the Mississippi Bar:

...So long as the attorney gives the client all of the original documents that belong to the client and gives originals and/or copies of all other documents, the attorney has complied with the [Mississippi Rules of Professional Conduct]. An attorney is not required to store a client's file after a case has been concluded if he can give the file to the client. The attorney may require his client to acknowledge receipt of the file and to relieve the attorney of responsibility for maintaining the file.

Not addressed in Opinion 234 is the situation in which the lawyer has lost contact with the client and therefore cannot return the file once unfinished business regarding the representation is concluded. Moreover, the Comment to Rule 1.15 states:

Unclaimed Property. Any lawyer holding property or monies belonging to clients with whom he has lost contact must retain and account for said funds subject to the Mississippi Uniform Disposition of Unclaimed Property Act.

Again, the Comment addresses only what should be done with “funds,” and the Act, Miss. Code Ann. § 89-12-1, et seq., makes no provision for dealing with unclaimed tangible personal property in the hands of anyone not a part of the federal government.

Since all of these authorities have had the opportunity to consider the question under review, and none have found a principle way to relieve the lawyer of the obligation to safeguard a client’s property when the property cannot be returned to the client, the Committee also declines to do so today. In the Committee’s view, the tangible personal property in a client’s file that is the property of the client, must, except as provided below, be returned to the client or safeguarded indefinitely by the lawyer in accordance with the Mississippi Rules of Professional Conduct.

The practical and sound advice in Opinion No. 234 and the Comment to Rule 1.15 raise the question of what documents “belong to the client.” This question is also presented by Rules 1.16(d) and 1.17(c). Each of these rules, in a different context, mentions the right of a client to obtain material from the client file maintained by a lawyer. For more than forty years, the ownership of specific items contained in a file has been considered to be a question of law. American Bar Association Informal Opinion No. 790 (Oct. 26, 1964). After reviewing the various authorities, we concluded in Opinion No. 144 (March 11, 1988) that:

to the extent that the client has a right to his file, then his file consists of the papers and property delivered to him by the lawyer, the pleadings or other end product developed by the lawyer, the correspondence engaged in by the lawyer for the benefit of the client and the investigative reports which have been paid for by the client. [Citation omitted.] However, the lawyer’s work product is generally not considered the property of the client....

We have elsewhere addressed the very limited circumstances under which a lawyer may withhold from the client the portions of a file that belong to the client. See

Opinion No. 105 (Sept. 9, 1985); Opinion No. 144 (March 11, 1988); Opinion No. 234 (Sept. 19, 1996). We need not revisit those questions here.

In Summary, once unfinished business regarding the representation has been concluded, all parts of the file that belong to the client should be returned to the client. If the client cannot be located, the parts of the file that belong to the client must be safeguarded in accordance with the Mississippi Rules of Professional Conduct.

The Committee further holds that there is no violation of the Mississippi Rules of Professional Conduct when a lawyer follows and abides by the precepts quoted in Opinion No. 98 from ABA Informal Opinion 1384 (Oct. 5, 1984), at least to the extent that such principles have not been overruled by subsequent opinions. The guidelines set out in that opinion are:

- Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).
- 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.
- A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect will be preserved by the lawyer.
- In determining the length of time for retention or disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.
- A lawyer should take special care to preserve, indefinitely, accurate and complete records of the lawyer's receipt and disbursement of trust funds.
- In disposing of a file, a lawyer should protect the confidentiality of the contents.
- A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.
- A lawyer should preserve, perhaps for an extended time, an index or identification of the files that the lawyer has destroyed or disposed of.

Obviously many factors outside the Mississippi Rules of Professional Conduct should be taken into account when a lawyer or law firm develops a file retention policy and practice. Among these factors are the limitation periods for claims against the lawyer and for claims that the client might choose to advance against others. In any case in which the client terminates representation by a lawyer, the lawyer should use caution in destroying any files that might be relevant.

Another option for file retention is for the lawyer to consider implementing an electronic storage system for those materials that can be maintained in that medium. Any lawyer who implements such a storage system is encouraged to keep abreast of the changes and advances in electronic storage so that they will be able to successfully retrieve their older electronically stored materials in the years that follow.



**ETHICS OPINION NUMBER 257  
OF THE MISSISSIPPI BAR  
RENDERED APRIL 8, 2010**

**CLIENT FILES OF A DECEASED ATTORNEY**--If an attorney is asked to handle the client files of a deceased attorney, the attorney must inventory the files, avoid conflicts of interest, maintain client confidentiality, determine any matters which require immediate action, contact clients and the courts so that clients' rights may be protected, protect any original documents or other important papers for safekeeping, and return any funds held on behalf of clients.

CAVEAT: This opinion is limited strictly to the facts set forth in the hypothetical submitted and is limited to the question of whether the proposed conduct is permissible under the Mississippi Rules of Professional Conduct. The Ethics Committee is prohibited from rendering opinions on questions of law by Article 8-15(c) of the Bylaws of The Mississippi Bar. Any incidental reference to legal authorities is informational only and should not be taken as the Committee's interpretation of such authorities or of the legal issues arising from the hypothetical presented or of the legal ramifications of the proposed conduct. The Committee's opinion is limited to ethical issues only.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on the following question:

Besides strongly advising the family members and/or relatives to hire an attorney to open an estate, what specifically are the duties of an attorney not connected with an estate who is asked to handle client files of a deceased attorney?

Because there is no attorney-client relationship, the assisting attorney has no legal duty toward the deceased attorney's clients. Should the attorney undertake to assist in the closing of the practice, however, he or she must inventory the files, ascertain any issues that require immediate action, contact the clients to determine their wishes, maintain client confidentiality, protect any original documents or other important papers (including client files) for safekeeping, and return any funds held on behalf of clients.

The American Bar Association recommends that all lawyers should plan for incapacitation or death. The plan should minimally include the designation of another lawyer who would have authority to look over the sole practitioner's files and make

determinations as to which files need immediate attention and provide for clients' notification of the lawyer's death. ABA Comm. On Ethics and Professional Responsibility, Formal Op. 92-369 (1992)(discussing the disposition of a deceased sole practitioner's client files and property). Sometimes, however, an attorney does not plan for the closing of the law office in the event of death. For whatever reason, the deceased attorney's family does not want to open an estate and asks another attorney to assist in closing the practice. How should the assisting attorney proceed?

As an initial matter, it should be noted that the assisting attorney does not represent the family of the deceased attorney or the clients of the deceased attorney in any official capacity, and therefore, has no legal duties to either party. *Id.*, Miss. State Bar Op. No. 114 (1986), Conn Informal Op. 99-36 (1999). The formation of a lawyer-client relationship requires the consent of both the client and the attorney for its formation and continuation. Conn. Informal Op. 92-10 (1992). However, because the deceased attorney and the assisting attorney are both attorneys, the Mississippi Rules of Professional Conduct (MRPC) are inevitably implicated in the decisions the assisting attorney must make.

If the attorney volunteers to assist with the closing of the deceased attorney's law practice, several Rules of Professional Conduct should guide the assisting attorney's actions. The assisting attorney should be mindful that he or she must be diligent (Rule 1.3, MRPC), maintain client confidences (Rule 1.6, MRPC) and safely keep a client's property (Rule 1.15, MRPC). In carrying out these duties, the attorney should be cognizant of any conflicts of interest as they relate not only to the deceased attorney's clients but also his or own clients. (Rule 1.7, MRPC). ABA Formal Op. 92-369 (1992).

The Committee offers the following guidelines for the assisting attorney:

1. The assisting attorney should first inventory the files. The initial review of a client's file should focus solely on obtaining the client's identity and the identity of the opposing parties, if any. If this preliminary review suggests that a more substantive review of a particular file may generate a conflict because of any obligations to a client or former client, the assisting attorney should (with permission of the deceased attorney's family) transfer the responsibility of reviewing the file to another attorney. The Committee recommends that the assisting attorney and the deceased attorney's family make arrangements for such a transfer prior to undertaking the preliminary review.
2. If the initial review of a file does not identify a conflict, the assisting attorney should perform a more substantive review of the file limited to determining whether any immediate action is required in order to protect a client's interest. If the assisting

attorney determines that prompt action is necessary, the attorney must contact the client without delay and inform the client of the status of the file. If the assisting attorney finds that no immediate action is needed with regard to a particular file, the assisting attorney should notify the clients in a timely fashion. The notification should inform the client of the death of the attorney and advise the client that the client should seek another attorney. ABA Formal Op. 92-369 (1992), Miss. State Bar Op. No. 98 (1984). The assisting attorney should focus first on notifying clients with active files and then notify clients with inactive files. Miss. State Bar Op. No. 114 (1986) advises that the assisting attorney should advise not only the clients, but also the courts where pending cases are filed.

3. The files must be maintained for a period of time in the event the lawyer is unable to locate certain clients of the deceased. In ABA Formal Op. 92-369 (1992), the ABA Committee on Ethics and Professional Responsibility noted that a lawyer does not have a general duty to preserve all of his files permanently. (citing ABA Informal Op. 1384 (1977)). However, clients and former clients reasonably expect their attorneys to preserve valuable and useful information. [For guidance on how long client files should be maintained and when client files may be destroyed, see Miss. State Bar Op. No. 254 (2005).] The attorney should not destroy or discard items that clearly or probably belong to the client, including original documents or documents furnished to the lawyer by the client. The attorney should not 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 limitations period has not expired. A lawyer should not destroy or discard information which the client may need; which has not been previously given to the client; which is not otherwise readily available to the client; and which the client may reasonably expect will be preserved. In Miss. State Bar Op. No. 98 (1984), an attorney who did not practice law with his attorney father sought the Bar's advice as to whether he could destroy his father's former clients' files and what notice procedures should be provided to the former clients. The Ethics Committee advised using "good common sense" and listed the considerations set forth in ABA Formal Op. 92-36- (1992) and Informal Op. 1384 (1977). A lawyer should preserve for an extended period of time an index of the files destroyed or discarded. Miss. State Bar Op. No. 98 (1984). See also, Miss. State Bar Op. No. 114 (1986).

4. With regard to unclaimed funds in the deceased attorney's trust account, the assisting attorney must make reasonable efforts to contact the clients and to return the funds. Miss. State Bar Op. No. 98 (1984) states that a lawyer should take special care to preserve, indefinitely, accurate and complete records of the lawyers receipt and disbursement of trust funds. ABA Formal Op. 92-369(1992) advises that reasonable efforts must be made to contact the clients and that, if efforts fail, the lawyer should

maintain the funds in the trust account. Whether the lawyer should follow the State's procedures for unclaimed property is a question of law which this Committee cannot address. [See Miss. Bar Op. No. 243 (1998) and comments to Rule 1.15, MRPC, for more information.]

5. At all times during the process, the assisting attorney must maintain and protect any client confidences. ABA Formal Op. 92-369 (1992), Miss. State Bar Op. No. 98 (1984). "Despite the fact that the clients involved were never your clients, it is our opinion that once you assume custody or control over the files you must ensure confidentiality as if they were your clients." Miss. State Bar Op. No. 98 (1984).

The Ethics Committee of The Mississippi Bar believes that these guidelines will assist an attorney to handle properly a deceased attorney's client files.

## **Capacity Worksheet for Lawyers – Self Assessment**

Attorney: \_\_\_\_\_

Date: \_\_\_\_\_

**This is not a diagnostic tool.** This self-assessment is designed as a starting point to assist lawyers who may have concerns about their current cognitive functioning. A thorough assessment by a qualified professional is recommended if you have concerns about your findings. If you need assistance with a referral to a qualified professional, please contact The Mississippi Bar Lawyers and Judges Assistance Program. When following up with a professional, you are encouraged to provide this assessment.

As you consider the following, pay special attention to significant changes in your functioning over time. Have you recently noticed, or have those around you observed marked changes. Check all that apply, and indicate specific examples. Use the additional comments section to cite other examples as needed.

**Do you have concern(s) about your functioning personally or professionally? Yes / No**

**If yes, please identify the concern(s,) and offer any thoughts as to possible cause(s.)**

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**Have others expressed concern(s) about your functioning personally or professionally? Yes / No**

**If yes, please identify who has expressed concern(s,) and what concern(s) were expressed.**

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**What are your thoughts about the concern(s) expressed?**

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## **Cognitive Functioning**

Short-term Memory Problems \_\_\_\_\_

- \_\_\_\_\_ Repeating questions frequently
- \_\_\_\_\_ Forgetting what is discussed within 15-30 min
- \_\_\_\_\_ Inability to remember/recall events of past few days

Additional comments:

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Language/Communication Problems \_\_\_\_\_

- \_\_\_\_\_ Difficulty finding words frequently
- \_\_\_\_\_ Using uncharacteristically vague language
- \_\_\_\_\_ Experiencing difficulty staying on topic
- \_\_\_\_\_ Disorganized
- \_\_\_\_\_ Unusual statements or reasoning

Additional comments:

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Comprehension Problems \_\_\_\_\_

- \_\_\_\_\_ Difficulty repeating simple concepts
- \_\_\_\_\_ Repeated questioning

Additional comments:

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Lack of Mental Flexibility \_\_\_\_\_

\_\_\_\_\_ Difficulty comparing alternatives

\_\_\_\_\_ Difficulty adjusting to changes

Additional comments:

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Calculation/Financial Management Problems \_\_\_\_\_

\_\_\_\_\_ Difficulty with previously familiar mathematical operations

\_\_\_\_\_ Difficulty with billing process

\_\_\_\_\_ Difficulty paying bills and managing office or personal finances

Additional comments:

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Disorientation \_\_\_\_\_

\_\_\_\_\_ Trouble navigating office or other familiar work environments; getting lost in familiar areas

\_\_\_\_\_ Confusion about day/time/year/season

Additional comments:

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## Emotional Functioning

Emotional Distress \_\_\_\_\_

- \_\_\_\_\_ Anxiety
- \_\_\_\_\_ Depressed mood
- \_\_\_\_\_ Tearful/distressed
- \_\_\_\_\_ Excited/pressured/manic
- \_\_\_\_\_ Uncharacteristic anger
- \_\_\_\_\_ Seemingly misplaced/misdirected anger
- \_\_\_\_\_ Emotional lability
  - Moving quickly between emotions (ex. - laughter to tears)
  - Experiencing emotions inconsistent with situation (ex. – smiling at sad news)

Additional comments:

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## Behavioral Functioning / Examples

Delusions \_\_\_\_\_

- \_\_\_\_\_ Feel others out “to get” you or spying/organizing against you
- \_\_\_\_\_ Feel persecuted
- \_\_\_\_\_ Fearful, feel unsafe

Hallucinations \_\_\_\_\_

- \_\_\_\_\_ Hearing, seeing, or otherwise interacting with stimuli others can’t see or hear

Poor Grooming/Hygiene \_\_\_\_\_

- \_\_\_\_\_ Lack of attention to appearance (unusually unclean/unkempt)
- \_\_\_\_\_ Inappropriate dress

Additional comments:

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## Mitigating/Qualifying Factors

**Stress, grief, depression, recent events affecting you:**

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### **Medical factors / conditions**

- \_\_\_\_\_ Sensory functioning (hearing / vision loss)
- \_\_\_\_\_ Family history of dementia
- \_\_\_\_\_ Substance abuse / dependence
- \_\_\_\_\_ Hypertension
- \_\_\_\_\_ Stroke history
- \_\_\_\_\_ Thyroid disease
- \_\_\_\_\_ Chemotherapy
- \_\_\_\_\_ Sleep apnea
- \_\_\_\_\_ Prescription medications
- \_\_\_\_\_ High cholesterol

Additional:

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### **Other Comments/Considerations**

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Source: *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*, by the ABA Commission on Law and Aging and the American Psychological Association (2005).  
Please read and review the handbook prior to using the worksheet.

## **Cognitive Impairment Questionnaire - 3<sup>rd</sup> Party**

Attorney Name: \_\_\_\_\_

Reporter: \_\_\_\_\_ Relation: \_\_\_\_\_

Date of Interview: \_\_\_\_\_ Location: \_\_\_\_\_

**This is not a diagnostic tool.** This questionnaire is designed as a starting point to assist persons who may have concerns about the current cognitive functioning of an attorney family member or colleague. A thorough assessment by a qualified professional is recommended if you have concerns about your findings. If you need assistance with a referral to a qualified professional, please contact The Mississippi Bar Lawyers and Judges Assistance Program. When following up with a professional, you are encouraged to provide this assessment.

As you consider the following, pay special attention to significant changes in the attorney's functioning over time. Have you, or others, recently noticed marked changes. Check all that apply, and indicate specific examples. Use the additional comments section to cite other examples as needed.

### **OBSERVATIONAL SIGNS & SYMPTOMS:**

#### **Behavioral Functioning at Work / Observations**

##### **Practice Management**

- \_\_\_\_\_ Deteriorating performance at work
- \_\_\_\_\_ Making mistakes on files / cases
- \_\_\_\_\_ Difficulties functioning without the help of a legal assistant / or other lawyers
- \_\_\_\_\_ Committing obvious ethical violations
- \_\_\_\_\_ Failing to remain current re changes in the law; over-relying on experience
- \_\_\_\_\_ Exhibiting confusion re timelines, deadlines, conflicts, trust accounting

Additional:

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**Appearance / dress**

- \_\_\_\_\_ Inappropriately dressed
- \_\_\_\_\_ Poor grooming/hygiene

Additional:

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**Interpersonal disinhibition**

- \_\_\_\_\_ Sexually inappropriate statements that are historically uncharacteristic for the lawyer
- \_\_\_\_\_ Engaging in uncharacteristically sexually inappropriate behavior
- \_\_\_\_\_ Uncharacteristic difficulties inhibiting anger
- \_\_\_\_\_ Disinhibition in other nonsexual behaviors

Additional:

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**Self-awareness**

- \_\_\_\_\_ Denial of any problem
- \_\_\_\_\_ Exhibits/expresses highly defensive beliefs
- \_\_\_\_\_ Feels others out “to get” him/her, organized against him/her

Additional:

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**Significant changes in characteristic routine at work**

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## **Cognitive Functioning / Observations**

### **Short-term memory problems** (reduced ability to manipulate information in ST memory)

- \_\_\_\_\_ Forgets conversations, events, details of cases
- \_\_\_\_\_ Repeats questions and requests for information frequently

Additional:

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### **Executive functioning** (slower and less accurate in shifting from one thought or action to another)

- \_\_\_\_\_ Trouble staying on track / topic
- \_\_\_\_\_ Trouble following through and getting things done in a reasonable time

Additional:

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### **Lack of mental flexibility**

- \_\_\_\_\_ Difficulty adjusting to change
- \_\_\_\_\_ Difficulty understanding alternative or competing legal analysis, positions

Additional:

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### **Language-related problems**

- \_\_\_\_\_ Comprehension problems
- \_\_\_\_\_ Problems with verbal expression
  - \_\_\_\_\_ Difficulty finding the correct word to use
  - \_\_\_\_\_ Circumstantiality (providing unnecessary details, difficulty “getting to the point”)
  - \_\_\_\_\_ Tangentiality (seemingly random shifts in thought/speech, “rabbit trails”)

Additional:

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**Disorientation**

- \_\_\_\_\_ Confused about date / time sensitive tasks
- \_\_\_\_\_ Missing deadlines for filing legal documents

Additional:

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**Attention / concentration** (problems with dividing attention, filtering out noise and shifting attention)

- \_\_\_\_\_ Lapses in attention
- \_\_\_\_\_ Overly distractible

Additional:

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**Insight/Awareness**

- \_\_\_\_\_ Attorney fully recognizes/acknowledges deterioration in functioning
- \_\_\_\_\_ Attorney appears to have some insight as to deterioration in functioning
- \_\_\_\_\_ Attorney appears to have no insight into deterioration in functioning
- \_\_\_\_\_ Attorney denies any deterioration in functioning

Additional:

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**Emotional Functioning / Observations**

- \_\_\_\_\_ Emotional distress
- \_\_\_\_\_ Emotional lability (rapid swings in mood/affect; incongruent affect for situation)

Additional:

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**Other Observations/Notes of Functional Behavior**

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**Mitigating/Qualifying Factors Affecting Observations**

**Stress, Grief, Depression, Recent Events affecting stability of client:**

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**Medical Factors / medical conditions**

- \_\_\_\_\_ Sensory functioning (hearing / vision loss)
- \_\_\_\_\_ Family history of dementia
- \_\_\_\_\_ Substance abuse / dependence
- \_\_\_\_\_ Hypertension
- \_\_\_\_\_ Stroke history
- \_\_\_\_\_ Thyroid disease
- \_\_\_\_\_ Chemotherapy
- \_\_\_\_\_ Sleep apnea
- \_\_\_\_\_ Prescription medications
- \_\_\_\_\_ High cholesterol

Additional:

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