Louisiana State Bar Association

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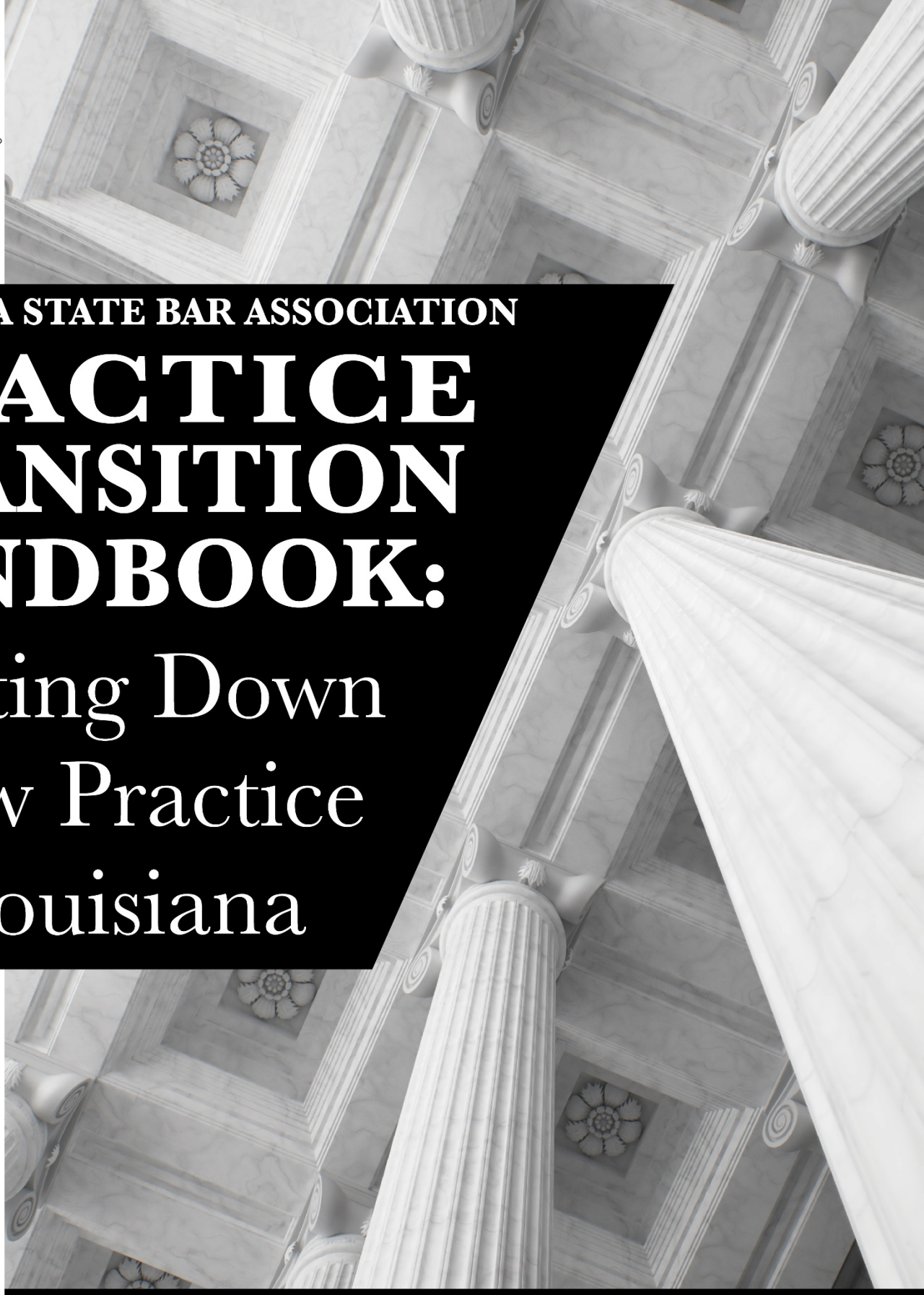

LOUISIANA STATE BAR ASSOCIATION

PRACTICE TRANSITION HANDBOOK:

Shutting Down a Law Practice in Louisiana

These materials are also available online at *www.lsba.org.*

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PREFACE

In many ways, the practice of law today (2017) would likely appear strange, unrecognizable and perhaps even terrifying to lawyers of just a few generations ago. A 19th century lawyer like Abraham Lincoln, if suddenly alive again and placed randomly into a 21st century law office, would probably feel very much like H.G. Wells' "Time Traveller"[1], unnervingly propelled forward into the bizarre world of the Eloi and Morlocks.

Modern-day lawyers are now nearly inseparable from and speak into almost-magical, glowing, cacophonous, hand-held electronic communication devices—sometimes, even "hands-free", as if speaking to disembodied spirits from a world beyond. Lawyers can now easily converse virtually face-to-face and in "real time" with clients who might then happen to be physically located in another part of town or even on the other side of the planet.

Lawyers are often able to work without ever touching or using any kind of paper. Legal documents and correspondence are generated almost-exclusively through digital means and, likewise, are ever more frequently accessed, read, reviewed and stored in an all-but-invisible, ethereal electronic realm currently referred to as "the Cloud". Professional stationers are virtually extinct, having lost their essentialness with the advent of inexpensive, commonly-used laser printers and now nearly paper-less law practices. Moreover, to the chagrin of old-fashioned printers, typesetters and publishers, once all-too-common rooms (and even entire floors) full of law books (and their subscription-based "pocket parts") are rapidly, permanently disappearing from law offices and law libraries. Many courts no longer use or, at least, no longer encourage the use of paper for pleadings and correspondence, preferring—or mandating, in some jurisdictions—the use of digital versions.

Courthouse visitors—both lay people and lawyers alike—must first have their whole bodies and all accompanying possessions scanned by electronic wands and whole-body, walk-through x-ray machines before being allowed to proceed into the building proper. And, once inside, many courtrooms now contain mysterious rectangular-shaped panels mounted on walls and/or hanging from ceilings, producing and displaying luminescent, almost three-dimensional images—sometimes moving pictures—along with all manner of sounds, while judges may glance into similar, smaller panels located at or near to the bench.

Even funds for payment of legal fees are less and less physically present as paper checks, currency or "coin of the realm". Thin, business-card-sized pieces of something called "plastic" can now be quickly "swiped" through small plastic peripheral devices attached to "smart phones", or have their embedded "chips" read and scanned by a small electronic card reader, transmitting data invisibly, wirelessly through the stratosphere, resulting in an automated, almost-instantaneous accounting transfer of funds from the digital memory banks of one financial institution to those of another in entirely different physical locations. And lawyers are thus paid without ever actually seeing, counting or physically touching any tangible form of money.

While our advancing technology has significantly altered and shaped our daily actions and customs, our

[1] The unnamed, time-travelling protagonist of ***The Time Machine***, written by H.G. Wells and first published in 1895.

mortality—thus far—still remains immutable. Just like those of the 19th century, lawyers today still grow old—albeit often noticeably older than those of previous generations—and lawyers still die (…tragically, sometimes without ever having had the opportunity to grow old). Modern-day lawyers still get sick—albeit fewer now than those of previous generations—and are still diagnosed with and suffer from a variety of debilitating illnesses and disabilities, both mental and physical.

As many of us in Louisiana learned all too well during August (and/or September) of 2005[2] and again in August of 2016[3], lawyers are still not above the forces of nature, and lawyers can have their entire worlds turned upside down—or worse—by the devastation and destruction brought about by natural disaster. And, alas, some lawyers—regardless of age or health or other acts of God—unfortunately face professional discipline or financial defeat, or both, and are forced to leave the practice of law, often never to be able to return to it.

Then, too, lawyers still naturally grow old—at least, seemingly the lucky ones—and are able to retire, either partially or altogether, to spend their remaining years living a bit more leisurely and in relative comfort, free of the relentless obligations, pressures and stresses that go hand-in-hand with the active practice of law. Retirement today, at least, may still resemble—and require many of the same steps required of—retirement by a lawyer of earlier, less-technologically-focused, arguably simpler times.

This publication is intended to aid anyone who is faced with shutting down the law practice of a present-day Louisiana lawyer, whether it's the lawyer shutting down his/her own law practice, either voluntarily or as a result of changed circumstances necessitating same, or someone else who is faced with having to do so because the "Lawyer-in-Question" cannot (or will not) do so. The information herein will likely be most pertinent and useful to shutting down a solo law practice—given the dynamics and limitations of a "one-man band"—but a large portion of its content can certainly still benefit lawyers in smaller firms, as well. Recognizing that lawyers who practice alongside other lawyers in a law firm setting[4] will—likely/hopefully—have written some form of partnership and/or firm operating agreement(s) that anticipate(s) and address(es) in some detail what happens in the event of the departure of a lawyer from the firm, this publication may have limited application to multi-lawyer law firm practices. But the advance planning and retirement sections can still be quite helpful even to those "pack-oriented" lawyers.

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November 2017

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[2] On August 29, 2005, Hurricane Katrina made landfall in southeast Louisiana, causing massive, unprecedented damage and destruction to New Orleans and much of the Gulf Coast region. On September 24, 2005, Hurricane Rita made landfall in southwest Louisiana, simply adding what seemed to many to be cruel insult on top of brand-new but pre-existing injury.

[3] In mid-August 2016, roughly 39% of Louisiana's parishes, encompassing approximately 35% of the total area of the State of Louisiana, were affected by large-scale, catastrophic flooding due to unanticipated heavy rainfall occurring virtually non-stop over a period of several days.

[4] I.e., a multi-lawyer law firm, where the lawyers are all partners, associates or members of some form of organizational business entity and, as such share duties, obligations, responsibilities, liabilities and assets.

ACKNOWLEDGMENTS

This Handbook has been prepared after reviewing and studying (and liberally borrowing from) a number of different materials from a variety of sources and/or other jurisdictions:

- ***Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which is Inevitable). A Handbook and Forms.*** Colorado Supreme Court Office of Attorney Regulation Counsel (2007) [Portions courtesy of the Oregon State Bar Professional Liability Fund] (All Rights Reserved).
- ***Planning Ahead: Protecting Your Clients' Interests in the Event of Your Disability or Death. Handbook and Forms.*** State Bar of Michigan (2014). (All Rights Reserved).
- ***Sudden Death or Disability: Is Your Practice—and Your Family—Ready For the Worst.*** Catherine M. O'Connell, State Bar of Michigan. (All Rights Reserved).
- ***Closing a Law Office: New Mexico Guide for a Third Party Closer.*** State Bar of New Mexico Senior Lawyers Division (2002). (All Rights Reserved).
- ***Handbook for Court-Appointed Inventory Attorneys.*** Supreme Court of the State of New York Appellate Division: Second Judicial Department (2008). (All Rights Reserved).
- ***Turning Out the Lights: Planning for Closing Your Law Practice.*** North Carolina Bar Association (2012). (All Rights Reserved).
- ***Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death. A Handbook and Forms.*** Barbara S. Fishleder. Oregon State Bar Professional Liability Fund (2006). (All Rights Reserved).
- ***Closing a Law Practice.*** State Bar of Texas. (All Rights Reserved).
- ***Planning Ahead: Protecting Your Client's Interests in the Event of Your Disability or Death.*** Ethics Department, Virginia State Bar (2011). (All Rights Reserved).
- ***Expecting the Unexpected: Succession Planning for Lawyers. A CNA Professional Counsel Guide for Lawyers and Law Firms.*** Matthew Fitterer, CNA Lawyers Professional Liability Program (2016). (All Rights Reserved).
- ***Retiring from Practice: Understanding Your Options.*** Matthew Fitterer, CNA Lawyers Professional Liability Program (2016). (All Rights Reserved).
- ***Succession Planning.*** Timothy J. Gephart, Minnesota Lawyers Mutual Insurance Company. (All Rights Reserved).
- ***Succession Planning: A Practice Must***. Michelle Lore. Minnesota Lawyers Mutual Insurance Company. (All Rights Reserved).
- ***Gone Fishin'.*** Suzanne Lever, Assistant Ethics Counsel, North Carolina State Bar Association. (All Rights Reserved).
- Informal Comments/Support/Materials from the Louisiana Attorney Disciplinary Board's Office of Disciplinary Counsel, Chief Disciplinary Counsel Charles B. Plattsmier.

We gratefully and fully acknowledge all sources and authors for their own work(s) on this subject.

Part One: Lawyer-Involved Shutdown of a Louisiana Law Practice

This section is intended to guide the lawyer who can and will take an active role in shutting down his/her own law practice, perhaps in order to retire altogether, or as a result of a choice to change lifestyle and/or career. Alternatively, there may be circumstances such that the lawyer would perhaps prefer not to shut down his/her law practice, but much greater forces have now made the need to shut down the law practice unavoidable. For example, the lawyer may fall victim to sudden, unexpected, serious illness, disability, incapacity or terminal medical diagnosis. Or professional discipline rising to the level of suspension, disbarment, permanent disbarment or permanent resignation from the practice of law may serve as the catalyst for the necessity to shut down the law practice—for a limited period or permanently, depending upon the terms of discipline. Finally, disaster—either man-made (i.e., financial/economic failure) or natural—may strike, sadly leaving the lawyer defeated and with no choice but to give up his/her law practice. In all of the instances covered within this section, the basic assumption is that the lawyer is able and willing to play some form of active part in the shutdown process of his/her own law practice. Obviously, a lawyer who is directly involved with the shutdown of his/her own law practice should, theoretically, be able to help to make the process go a bit more smoothly than if the lawyer were not able to assist at all.

Section 1. First Things First: Advance Planning by the Lawyer for "the Seven D's"

One of the most prudent and beneficial things any lawyer—especially a solo practitioner—can do is to take an active, conscious role in planning ahead for what may be referred to as the "Seven D's": **D**eath; **D**efeat; **D**isability; **D**isappearance; **D**iscipline; **D**isaster; and **D**isease.[5] To be sure, certainly sobering subjects, none of which any of us care to dwell upon, let alone even imagine for ourselves. However, it is critically important for us, as lawyers, to recognize that we actually have an ethical obligation under Rule 1.16(d) of the Louisiana Rules of Professional Conduct to protect the interests of our clients at the termination of our legal representation to the extent reasonably practicable.[6] It can be argued that a lawyer's personal encounter with any one of the "Seven D's" can, unfortunately, very easily result in the effective termination of legal representation by that lawyer. As such, it seems difficult to argue that a lawyer who has made absolutely no advance plans or detailed arrangements to protect the interests of his/her clients under such circumstances—but who might then suddenly, unexpectedly die or become seriously ill or fully disabled—has actually fulfilled his/her ethical obligation to protect the interests of his/her clients "*...to the extent reasonably practicable...*" upon termination of representation.

Why? Because, as legal professionals, we are further ethically obligated to "*...provide competent representation to a client. Competent representation requires the legal knowledge, skill, **thoroughness and preparation** reasonably necessary for the representation...*"[7] [***emphasis*** added]. Likewise, we are also ethically obligated to "*...act with **reasonable diligence and promptness** in representing a client...*"[8] [***emphasis*** added]. Just how has a lawyer been reasonably thorough, prepared, diligent and prompt in representing his/her clients when suddenly—and perhaps without any warning—the lawyer dies or becomes totally, permanently disabled or his/her law office has effectively been wiped from the face of the planet by natural disaster, but, yet, the lawyer has made no distinct, demonstrable prior effort to plan and prepare for any such very real possibilities? While few of us like to spend time acknowledging it, we are definitely not immortal. While often tragic and terrible for the lawyer who has suffered from one (or more) of "the

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[5] While perhaps equally as bad for us as lawyers, this list should not be confused with the Western Christian list of "Seven Deadly Sins": Lust; Gluttony; Greed; Sloth; Wrath; Envy; and Pride.

[6] Rule 1.16(d) of the current Louisiana Rules of Professional Conduct states:

> *Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.*

[7] Rule 1.1(a) of the current Louisiana Rules of Professional Conduct states:

> *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

[8] Rule 1.3 of the current Louisiana Rules of Professional Conduct states:

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

Seven D's", is it any less tragic or terrible for that lawyer's clients—the people who have been depending heavily upon the continuing efforts of the lawyer, many of whom may have their own on-going or now equally-as-sudden, unexpected issues with which to deal?

It is both incredibly naïve and entirely irresponsible for any lawyer—especially a lawyer who is a solo practitioner—to ignore the importance of and need for considering and planning for "the Seven D's" vis-à-vis the interests of the lawyer's own clients. Serving a client best, then, goes beyond just simply doing a good job at present; serving a client best also requires anticipating how the client might be reasonably protected if and when the lawyer suddenly, unexpectedly cannot function any longer as the client's lawyer. What follows below, then, is intended to aid a Louisiana lawyer in trying to serve his/her clients best, at least with respect to what happens to the clients if one of 'the Seven D's" happens to the lawyer. The prudent "Planning Lawyer", as he/she will be referred to herein, will have taken the steps reasonably necessary to protect the interests of clients in the event of a sudden, unexpected termination of legal representation brought on by the lawyer's experience of one (or more) of "the Seven D's". "The Planning Lawyer", through his/her thoroughness and preparation, will help to ensure that the representation of his/her clients continues forward diligently and promptly, regardless of that lawyer's own sad, sudden misfortune.

A. The "Back-Up Lawyer"

One must begin this planning process by asking, on the most basic level, what will happen to your clients, their cases, their files and their funds held in your client trust account(s)[9] if something unexpected but serious suddenly happens to you, their lawyer? If you experience/fall victim to a sudden, unexpected disability, impairment, disaster—or worse, if you suddenly disappear and/or die—will the interests of your clients still be properly cared for? How and by whom? Will your representation of those clients be effectively/constructively terminated as a consequence of that sudden disability, impairment, disaster, disappearance or death?

And, if so, will there be someone else who is knowledgeable and who is available, ready, willing and able—i.e., another lawyer who is competent—to take your place, taking steps to the extent reasonably practicable—often without a moment to lose—to protect the interests of your clients, at least until they can find and hire a new, different lawyer?

Thus, it is now time to explore the concept of what will be referred to herein as a "Back-Up Lawyer". In simplest terms, the "Back-Up Lawyer" is another (optimally, Louisiana-licensed) lawyer who has been previously recruited by you, the "Planning Lawyer", to stand by and step forward in the event that one (or more) of "the Seven D's" strikes suddenly/unexpectedly and you, the "Planning Lawyer", are no longer able to help your clients in any way meaningful. Representing clients normally, i.e., as one's very own clients, is certainly not easy; stepping into another lawyer's law practice suddenly, unexpectedly in order to try and help that other lawyer's clients is something less than heavenly (although there should probably be a special place in heaven set aside for those who are willing and able to do so…).

Will the "Back-Up Lawyer" know enough and be prepared enough—quickly enough—to be able to perform or assist with the performance of the impaired/disabled/missing/deceased lawyer's obligations under Rule 1.16(d)? In simplest terms, will the "Back-Up Lawyer" be able to assist with giving the "Planning Lawyer's" clients reasonable notice regarding the "Planning Lawyer's" impairment/disability/disappearance/death, and perhaps the need to seek/obtain a new, different lawyer (immediately) to take over legal matters/cases for those clients? Will the "Back-Up Lawyer" be able to provide/allow the "Planning Lawyer's" clients reasonable time to find and obtain their respective new lawyer(s)—and, if necessary, do whatever is reasonably necessary in order to afford those clients sufficient time to do so without prejudice or damage to their respective interests [e.g., perhaps, in the interim, seek/obtain continuances in litigated matters, re-schedule meetings/depositions/conference calls, file lawsuits/pleadings in order to avoid tolling of prescription and/or other loss of legal rights, etc.]?

To be clear, the "Back-Up Lawyer" should <u>not</u> be expected or intended simply to absorb and continue on permanently with all of the clients and the law practice of the "Planning Lawyer". The "Back-Up Lawyer" is not intended to be some sort of heir or legatee of the "Planning Lawyer" with respect to the "inheritance"

[9] While most solo lawyers and small law firms will very likely/generally only have a single IOLTA ("Interest On Lawyer's Trust Account(s)") client trust account, containing the pooled funds of any/all clients being held in trust by the lawyer(s)/law firm(s), it should be noted that, technically, a lawyer is permitted to have other, additional client trust accounts—if/when appropriate—for safeguarding the funds of individual clients that meet certain criteria under the Rules. See Rule 1.15 of the current Louisiana Rules of Professional Conduct, in particular, Rule 1.15(a), Rule 1.15(g) and Rule (2) of the IOLTA Rules (also contained at the end of current Rule 1.15).

of the "Planning Lawyer's" clientele and law practice.[10] The "Back-Up Lawyer" is really intended only to help to provide/serve as a transition for clients between the now-impaired/disabled/missing/deceased/disciplined/defeated lawyer and whatever new lawyer(s) those clients might ultimately find and choose to hire to proceed forward with their respective legal matters. In fact, in many instances, it may be much easier/simpler and less risky for the "Back-Up Lawyer" to be clearly limited strictly to functioning only as "temporary transition counsel", specifically/purposefully disclaiming and declining all responsibility to assume full-fledged, full-time "permanent" representation of the one-day-potentially-former clients of the "Planning Lawyer". It would certainly appear somewhat easier and less burdensome for a lawyer, as a potential/chosen "Back-Up Lawyer", to try and fulfill a clearly-defined, strictly limited, very specific set of responsibilities with respect to a whole set of previously-unknown clients and their respective legal matters than to "sign on" for total and unlimited responsibility for just about anything and everything that may exist within the "Planning Lawyer's" practice at whatever time the "Back-Up Lawyer" might be suddenly called upon to step forward and act as such.

Likewise, by clearly defining and strictly limiting the obligations and parameters of the would-be "Back-Up Lawyer", the "Planning Lawyer" should not be as hampered or limited in trying to find some other lawyer who is not only willing but would be reasonably able (i.e., competent) to function as such. Of course, finding another lawyer who has a similar practice and similar types of clients would seemingly be very helpful and perhaps a good choice, but that is not always possible—or even desirable. Lawyers with very similar practices, especially in (but not always just in) smaller communities, can often be (serious) direct competitors for the same cases and same clients, so choosing a direct competitor to be your "Back-Up Lawyer" might be, in certain instances, very much like "inviting the fox into the henhouse". So, by clearly-defining and strictly limiting the scope of the "transition representation" of the "Back-Up Lawyer", the "Planning Lawyer" may have an easier time finding and choosing a good, trustworthy, professional lawyer who would be suitable and capable of performing the functions needed, even though that "Back-Up Lawyer" is not necessarily well-versed in and does not normally concentrate his/her own law practice on handling the same types of cases or clients handled by the "Planning Lawyer". Nonetheless, even under such a clearly-defined "limited scope representation"[11], the "Back-Up Lawyer" will still certainly have his/her work "cut out" for himself/herself, and the "Planning Lawyer" will still have to work diligently and carefully to find the right person for the job.

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[10] Recent changes to the Louisiana Rules of Professional Conduct—namely, the adoption/enactment of new Rule 1.17 and amendment of Rule 5.4(a)(4), effective 07/01/2016—have now made it possible for a lawyer to sell a law practice to, or to purchase a law practice from, another lawyer. See APPENDIX M. However, it is currently not possible to legally "inherit" a law practice by means of some form of donation *mortis causa*. Legal clients, individually or collectively, are not considered to be real property susceptible of sale, purchase, donation or inheritance by or to lawyers, most fundamentally because clients have the absolute right to hire and fire any lawyer at will and without cause.

[11] Rule 1.2(c) of the current Louisiana Rules of Professional Conduct states:

> *A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.*

B. And The Winner Is…

Once the "Planning Lawyer" has, in fact, come to terms with the obligation and benefits of actually planning for "the Seven D's", the next hurdle—and, arguably, the second-most important element of this advance planning process—is actually finding and selecting the person (or, perhaps, even persons[12]) who will serve as the "Back-Up Lawyer". Like Indiana Jones faced with the prospect of eternal life or unspeakable death—as well as now holding within his own hands the fate of his unexpectedly-gunshot, mortally-wounded father—upon selecting a single cup as the true "Holy Grail" from among so many different possible choices, one must certainly make an effort to "choose wisely" when picking another lawyer to serve as one's "Back-Up Lawyer".[13] Not only is the "Planning Lawyer" going to be opening up (albeit limited) access to all of his/her hard-earned clientele and their respective confidential case files, but the "Planning Lawyer" will also be opening up access to his/her own sensitive business and financial information, including—under the most ideal conditions—access to the "Planning Lawyer's" IOLTA client trust account. That is, without a doubt, the prospect for an "unspeakable (professional) death" for the "Planning Lawyer" in the event that he/she has, in fact, "chosen poorly".[14]

As every licensed lawyer has been required to attend and graduate from law school, as well as study for, take and pass the bar exam, and, as a result—even if the lawyer is now a fairly isolated/introverted solo practitioner with limited on-going contact/relationships with other local lawyers—that lawyer should still know/be able to reach out to a few other lawyers (i.e., friends/acquaintances from law school or bar exam study) with regard to serving as "Back-Up Lawyer", perhaps even in some form of reciprocal arrangement (i.e., with each lawyer serving as "Back-Up Lawyer" for the other). Ideally, given the still-awesome but strictly-limited responsibilities that are incumbent upon both the "chooser" and the "chosen" in this scenario, one may wish to reach out, first, to other lawyers who are good friends and with whom the "Planning Lawyer" has some degree of history, experience and personal/professional comfort. Dealing with the "devil you know" is quite often better than dealing with one who is entirely foreign and a completely unknown commodity. Put another way, it is clearly not recommended that one should ever seriously consider first choosing a complete and total stranger to serve as one's "Back-Up Lawyer".

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[12] To be clear, having a single "Back-Up Lawyer" in line for the unexpected is prudent and what is being recommended here. However, while certainly not being suggested as a necessity or requirement, there is nothing wrong with "going the extra, extra distance" and finding/designating not just one but two or more lawyers to serve as "Co-Back-Up Lawyers" or "Alternate Back-Up Lawyers". Realistically, though, finding and choosing just one lawyer to serve as a "Back-Up Lawyer" will already be difficult enough for most of us.

[13] In the 1989 film, ***Indiana Jones and the Last Crusade***, the protagonist/hero must very quickly but correctly choose which one of a vast and varied selection of goblets is the one and true "cup of a carpenter" in order to try and save the life of his quickly-fading, mortally-wounded father. However, immediately before making his choice, the ancient guardian of the Grail has already told Jones and an apparently less-thoughtful chooser that the consequences of choosing correctly are wonderful beyond belief, but most terrible if one's selection is incorrect. Thus, they are warned that one "must choose, but choose wisely".

[14] Statistically, year after year, the most serious forms of discipline, i.e., lengthy suspension, disbarment, permanent disbarment and permanent resignation from the practice of law, appear to be "awarded" more frequently to lawyers with issues related to mismanagement, fraud and/or theft regarding the funds of clients and third parties in connection with their IOLTA client trust accounts than for any other reason(s).

However, if law school acquaintances/friends were something less than plentiful, or have since "faded away", or are very limited/non-fruitful for this endeavor, the "Planning Lawyer" should then strongly consider joining and/or getting somewhat involved in a local/specialty bar association, if for no other reason than to try and develop/foster new friendships/relationships with some other local lawyers, and if for nothing else but for the goal/benefit of finding/securing a suitable "Back-Up Lawyer". Those new-found lawyers, of course, will very likely also serve to provide a useful support network for other law practice/quality of life issues, regardless of sudden disability/impairment/etc. Networking for anyone in a private, for-profit business is usually never a bad idea; networking for lawyers in private practice—especially solo practitioners—is almost a necessity for helping to keep and maintain one's perspective, grounding and, often, one's sanity.[15]

Alternatively, if the "bar association route" is not to your liking or your "cup of tea", there is still always the option—albeit potentially a longer, harder, less-traveled road—of joining some non-law-related group, club or organization which might cater to and suit your own personal, intellectual or spiritual interests, needs and/or hobby(ies), etc. And quite often, even a non-law-related club or group will still have a surprisingly-abundant sampling of lawyers already embedded within its constituency—not difficult to understand, given the time-proven benefits of broad networking for client leads and business opportunities, as well as the more business-neutral platform for generally demonstrating to others one's broader life skills, hard-working nature and depth of trustworthiness.[16] Searching along this less-conventional avenue, i.e., outside the mainstream of the day-to-day legal community, may, in some cases, even make it easier for the "Planning Lawyer" to "size up" the trustworthiness, personal integrity and general character of the potential "Back-Up Lawyer".

In the end, it may not be possible for the would-be "Planning Lawyer" to find and conscript a "Back-Up Lawyer" in short order. It may take some considerable time and patience to be able to locate just the right person. Since you're really hoping that all of this advance planning will never be needed, anyway, you should have time—and cultivate the patience—to keep looking and working at trying to find someone. Eventually, with more than 22,000 lawyers currently licensed in Louisiana,[17] the odds of your being able to locate successfully at least one other lawyer who might be suitable and willing to serve as your "Back-Up Lawyer" (and perhaps for you, likewise, to serve as "Back-Up" lawyer for that person) are heavily in your favor, assuming that you take this obligation seriously and work with reasonable diligence and

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[15] Like the character Gollum from J.R.R. Tolkien's ***The Hobbit*** and ***Lord of the Rings*** trilogy, a solo practitioner who remains "underground" and too long in professional isolation can begin to lose perspective and, indeed, some degree of touch with the rest of the world around him/her. In short, keeping "the Precious" hidden deeply away from all others and from the light of day—while sitting alone, talking to oneself—in a law office is simply not good for anyone.

[16] This is perhaps the most effective but "softest sell" of them all for lawyers "trolling" for new clients—members of the group first get to know the lawyer not as a lawyer but as just another hard-working member and all-around good, trustworthy person who shares their same interests, likes, dislikes, character, integrity, etc. Who better, then, to want to hire as your lawyer to help you with your problem(s) than someone who you already know fairly well, trust and respect? Hence, one of the reasons that many lawyers who are good "rainmakers" tend to be deeply involved in lots of otherwise "extracurricular" activities outside of their law practices.

[17] Current (2017) LSBA membership easily exceeds 22,000 (approaching 23,000) licensed Louisiana lawyers.

persistence towards achieving that goal.

Once the "Back-Up Lawyer" has been found and is committed to serving as such, it would also be prudent to notify the Louisiana State Bar Association of that arrangement, i.e., "*Dear LSBA, please be advised that I have selected Lawyer X to serve as my "Back-Up Lawyer" in the event of my death, disappearance, disability, impairment, discipline, etc., and Lawyer X has agreed to do so. Kindly please note this for your records, since it is possible/likely that, under those circumstances, one or more persons may contact the LSBA seeking information and/or guidance about how things should then be handled with respect to my law practice, clients, etc.*"[18]

[18] See APPENDIX D SAMPLE NOTICE OF DESIGNATED BACK-UP LAWYER.

C. The Back-Up Plan

Once you have found a suitable and willing lawyer to serve as your "Back-Up Lawyer", you will need to work together on the formulation and execution of your "Back-Up Plan". A very basic, sample "Back-Up Plan" ["Agreement to Close Law Practice"] is provided here in "APPENDIX A" in an effort to help you draft your own practice-appropriate, custom-tailored plan. However, it is important for both of you to consider and understand some key concepts and components before preparing and executing your own "Back-Up Plan".

i. Durability

Like Powers of Attorney for Healthcare Decisions (i.e., "Advance Medical Directives") and for Financial Decisions (i.e., "Living Wills"), the lawyer should strongly consider having a "Back-Up Lawyer" designated in writing and with a written/signed/notarized acceptance by the "Back-Up Lawyer", along with details/guidelines regarding a variety of tasks/duties that the "Back-Up Lawyer" will likely need to perform in the event of the "Planning Lawyer's" sudden disability/impairment/disappearance/discipline/death. The written "Back-Up Plan" should contain specific language/conditions regarding when/how the Plan may be triggered and **noting expressly that the Plan survives the incapacity/death of the "Planning Lawyer" (i.e., that it is "durable"),** so as to avoid legal questions/complications/hurdles that might otherwise be raised if the Plan is silent/omits such details/contingencies. But see also *Subsection "viii"*, below, regarding "survivability".

ii. Unfettered Access to Your Law Practice - Office, Computers, Client Files, Calendar(s), Bank Accounts/Statements, Financial Records (Accounts Receivable/Accounts Payable), Safe Deposit Box(es), Practice-Related Insurance Coverage/Policies, etc.

The "Back-Up Plan" should provide adequate details/instructions/directives as to such practical considerations as:

- Office keys/keycards/access/security alarm procedures/codes.
  - Contact information for office landlord/building management (if applicable).
  - Contact information for anyone with extra/spare keys, keycards, etc.
- Computer Passwords/Email Passwords/Office On-Line Bank Account Passwords (or, at least, instructions as to who/where the "Back-Up Lawyer" may find/contact/look for those passwords, e.g., the trusted spouse/significant other/child/relative/friend of the disabled/impaired/deceased lawyer who has been entrusted with those passwords by the now-disabled/impaired/deceased lawyer).

- Location/Access to ALL physical (i.e., "paper") and/or electronic/digital client files—active, inactive and closed files, as well as any off-site storage and/or cloud/digital/electronic storage/back-ups.

    - "Planning Lawyer" should strongly consider maintaining a "master file" or "master list" of client files, effectively detailing and identifying all client files—open/active, inactive and closed—in one organized folder, file, spreadsheet, list, etc. To be most useful/beneficial, this should be kept up-to-date.
    - Any keys, combinations and/or passwords needed to access file cabinets, physical file storage facilities, online/"cloud" storage services, etc.

- Location/Access to all professional calendar(s)—paper and electronic—utilized/kept by the "Planning Lawyer", i.e., organized information as to any/all pending court dates, teleconference dates, client meetings, scheduled depositions, prescription dates, etc.

- Location/Access to all law firm bank accounts (operating and client trust accounts [both IOLTA and any non-IOLTA accounts], real estate closing/title company escrow accounts, etc.), blank checks, bank statements, endorsement stamps, deposit slips, etc.

    - Strongly consider making the "Back-Up Lawyer" a signatory on those accounts, including all client trust account(s)—IOLTA and non-IOLTA—in order to avoid delays/problems with client/third-party access to funds held in client trust account(s). But "Planning Lawyer" must develop/have absolute confidence/trust in the unwavering honesty/integrity of that "Back-Up Lawyer" before making the "Back-Up Lawyer" a signatory. Also, please see *Subsection "v"*, below.

- Location/Access to all law firm financial records, including office lease(s), accounts payable (i.e., law firm bills, such as rent, office electricity/utilities, staff payroll, third-party providers, court reporters, etc.) and accounts receivable (i.e., client billings for fees and costs, any collectible rents, annuities, long-term/financed fee payouts and/or other incoming payments, etc.).

- Location/Access to any/all law office safe(s), safe deposit boxes, storage facility(ies), etc.

- Location/Access to any/all practice-related insurance coverage(s)/policies, including professional liability (i.e., malpractice) policy(ies), business interruption policy(ies), etc.

iii. "Law Office Procedures Manual"…or "How to Run My Law Practice for Dummies"

The "Planning Lawyer" may strongly wish to consider trying to create a "Law Office Procedures Manual", i.e., a "how-to-run-and-do-everything-in-this-law-office" set of step-by-step instructions/explanations/information, which would be of invaluable assistance to the "Back-Up Lawyer" suddenly faced with that task in the event that the "Back-Up Plan" is triggered/effectuated by the "Planning Lawyer's" encounter with one (or more) of "the Seven D's". It should be prepared

from the perspective of "what would a lawyer who knows very little about what happens day-to-day in this office need to know in order to be able to step in tomorrow and keep things running somewhat smoothly for a while, especially if no one from my current office—including me, the lawyer—is available to answer any questions or offer any help at all".

It should be noted that "The Law Office Procedures Manual" is different and distinguished from the "Back-Up Plan" insofar as the "Back-Up Plan" is the overall formal, written legal document prepared and executed by the "Planning Lawyer" and the "Back-Up Lawyer"—much like a Durable Power of Attorney—whereas the "Law Office Procedures Manual" is more of a "nuts-and-bolts" guidebook or "how-to" set-of-instructions reference book prepared by the "Planning Lawyer" to help the "Back-Up Lawyer" do whatever is reasonably necessary to help transition the "Planning Lawyer's" practice if and when the "Back-Up Plan" must be activated, i.e., because one (or more) of "the Seven D's" has suddenly, unexpectedly occurred to the "Planning Lawyer". "The Law Office Procedures Manual" can be thought of as an integral part or very practical component of the overall "Back-Up Plan" but it should not be the only component of the "Back-Up Plan", i.e., the formal, legal document referred to a the "Back-Up Plan" should also be prepared and properly executed.

As an added incentive and benefit for the "Planning Lawyer's" initially making/taking the time to prepare and regularly update this tool, such a "Law Office Procedures Manual" would also serve as a useful training guide/reference for training any new staff members and/or associates who, in the meantime, might join the "Planning Lawyer's" office, regardless of the "Planning Lawyer's" potential sudden encounter with one of "the Seven D's". It may also aid the "Planning Lawyer" if/when any staff member(s) is/are absent (even for just a day or two) and/or is/are no longer employed by the "Planning Lawyer". Likewise, depending upon the quality and degree of detail contained within one's "Law Office Procedures Manual", it could conceivably even serve as a useful/favorable piece of supporting evidence in defense of any malpractice claims or disciplinary complaints that might concern the level of care, competence, diligence or quality of your legal representation and/or the conduct/supervision of non-lawyer assistants.[19]

[19] Rule 5.3 of the current Louisiana Rules of Professional Conduct states:

> *With respect to a nonlawyer employed or retained by or associated with a lawyer:*
>
> *(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;*
>
> *(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and*
>
> *(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:*
>
> *(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or*
>
> *(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the*

Naturally, the "Planning Lawyer" should also make efforts to keep both the "Back-Up Plan" and the "Law Office Procedures Manual" up-to-date/current, as equipment, passwords, processes, day-to-day tasks/responsibilities and/or staff might change subsequent to the initial drafting of those documents.

iv. Preparation and Role of Office Staff (If Any)

If the "Planning Lawyer" has any non-lawyer office staff/assistants (full-time, part-time or contract workers), it is important that the "Planning Lawyer" should take/make the time to introduce/familiarize the staff with the designated "Back-Up Lawyer", letting them know that the "Back-Up Lawyer" is so designated and that the staff will be expected to assist the "Back-Up Lawyer", to the extent reasonably practicable, with carrying out the duties/responsibilities detailed within the "Back-Up Plan" if/when the "Back-Up Plan" should ever be triggered and activated.

As such, office staff should also be aware of/knowledgeable (to the extent practicable/reasonable) regarding the existence, contents and workings of the "Law Office Procedures Manual", given that the staff will almost certainly be the ones who are primarily called upon to assist the "Back-Up Lawyer" with his/her duties pertaining to figuring out how to run and running your law office—for however long it might actually take to shut down your law practice—in the event the "Back-Up Plan" is triggered and activated. Any issues, potential problems, resistance or concerns of the staff about this "Back-Up Plan" and/or the "Back-Up Lawyer" should be reasonably addressed and, if at all possible, laid to rest as soon as practicable so that, in the event the "Plan" is ever triggered, hopefully none of these things will still linger and erupt as issues, problems or concerns, i.e., leaving these things undiscussed and unsettled really does not help and, arguably, would not be the ethical/professionally responsible thing to do.[20]

For the same reasons, the "Planning Lawyer" should also, of course, inform/acquaint/familiarize the "Planning Lawyer's" close family member(s)/friends with the existence and identity of the "Back-Up Lawyer", the "Back-Up Plan" and the "Law Office Procedures Manual".

v. Client Trust Accounting Issues

As noted previously, there is an incredible risk inherent in giving another, "independent" lawyer—i.e., someone who is not normally otherwise legally or ethically responsible for or involved with your own law practice on a day-to-day basis—what would effectively amount to totally unfettered access to and signature authority over your client trust account(s) and the monetary contents therein. This is probably the next hardest part of creating and effectuating a comprehensive and truly meaningful "Back-Up Plan". One could, perhaps, still do everything else as recommended herein except giving

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conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[20] Remember the duty/obligation of "*…thoroughness and preparation reasonably necessary for the representation…*" stated within Rule 1.1(a) of the current Louisiana Rules of Professional Conduct.

the "Back-Up Lawyer" access to and authority over one's client trust account(s)—arguably, some advance planning and meaningfully-envisioned alternative care/protection for one's clients in the event of some unexpected, sudden diminution/termination of your ability to function as a lawyer is certainly much better in the long run than absolutely none at all. But, at the end of the day—particularly in any law practice that involves a fairly steady flow of funds into, through and out of the client trust account(s)—third parties and clients who are entitled to and will want access to such funds, especially when the clients are suddenly, unexpectedly faced with the need to find and hire a new, different lawyer (perhaps in a real hurry), will be, at the very least, hindered, hampered and inconvenienced by the period during which they will be unable to gain immediate access to their funds held in the client trust account(s) of the now-impaired/disabled/missing/deceased/disciplined/defeated "Planning Lawyer". Hence, this is again—and, in this aspect, most especially—why it is very important to "choose wisely" when choosing someone to serve as one's "Back-Up Lawyer".

Of course, it is also important to remember that Rule 1.15(f)[21] of the current Louisiana Rules of Professional Conduct requires that all checks, drafts, electronic transfers or other withdrawal instruments or authorizations from a client trust account must be personally signed (or, in the case of electronic, telephonic or wire transfers, from a client trust account, directed) by a lawyer. So, while at first glance, the trust/risk issue might seemingly be easily side-stepped or altogether avoided by giving signature authority to a spouse, family member, loved one or trusted friend who is not a lawyer, the Rules at present do not provide for that as a permissible, ethical option.

However, there are at least two possible compromises available for the "Planning Lawyer" which would involve using both the "Back-Up Lawyer" and a non-lawyer spouse, family member, loved one or trusted friend of the "Planning Lawyer":

1) Under the first variation, the "Planning Lawyer" may wish to consider drafting the "Back-Up Plan" to provide for the "Back-Up Lawyer" to have unfettered access to the "Planning Lawyer's" client trust account(s) but only if and when the circumstances that would trigger the activation of the "Back-Up Plan" first come to pass. i.e., "contingency access" to the trust account(s), contingent upon the occurrence of circumstances that would trigger activation of the "Back-Up Plan". The key here, however, is that the "Back-Up Plan" document should not by itself/alone equate to a full, legal Durable Limited Power of Attorney for signature authority on the "Planning Lawyer's" client trust account(s). For the sake of peace of mind, honesty and security for all concerned, the "Planning Lawyer" should have also executed a separate legal document that encompasses the actual, legal Durable Limited Power of Attorney granting signature authority to

[21] Rule 1.15(f) of the current Louisiana Rules of Professional Conduct states:

> *Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account* ***shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm****. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.* [***emphasis*** added].

the "Back-Up Lawyer" over the "Planning Lawyer's" client trust account(s) (and, perhaps also therein, signature authority over the "Planning Lawyer's law office operating, payroll and other non-client-trust account(s))[22]—but that separate document has been entrusted by the "Planning Lawyer" for safekeeping with a spouse, family member, loved one or trusted friend of the "Planning Lawyer" with clear, definite instructions[23] to deliver it to the "Back-Up Lawyer" but only if and when it has first been confirmed that the "Planning Lawyer" has encountered one (or more) of "the Seven D's" and is no longer capable of continuing with the practice of law.

This is sometimes referred to as a "springing power of attorney", since it only "springs" forward, into effect, if and when certain preliminary conditions/contingencies come to pass. This option, if one is able to find and prevail upon not just one person but two who can be trusted and are up to the task, may be a better, less troubling alternative than simply giving the "Back-Up Lawyer(s)" the "keys to the kingdom" all at once within a single "Back-Up Plan" document.

2) A second variation of a compromise regarding giving access to one's client trust account(s) to the "Back-Up Lawyer" but with some preliminary conditions/contingencies would be for the "Planning Lawyer" to structure the "Back-Up Plan" to include specifically/expressly a durable "springing power of attorney" providing that, in the event of the "Planning Lawyer's" encounter with one or more of the "Seven D's", all of the "Planning Lawyer's" bank accounts—both client trust account(s) and any non-client-trust account(s), such as the lawyer's operating account—would then, from that point forward, require not one but two (2) signatures in order to transact any business, write checks, disburse funds, etc., with regard to the account(s) in question. Those two (2) signatures would be: 1) the signature of the "Back-Up Lawyer"; and 2) the signature of the "Planning Lawyer's" spouse, family member, loved one or trusted friend.[24] This variation, then, would theoretically help to avoid/prevent the "Back-Up Lawyer" from unilaterally, clandestinely raiding or otherwise improperly confiscating/converting/stealing funds from the "Planning Lawyer's" bank accounts, while also keeping the non-lawyer spouse, family member,

[22] See APPENDIX B SAMPLE DURABLE LIMITED POWER OF ATTORNEY FOR BANKING ACCESS and SIGNATURE AUTHORITY.

[23] See APPENDIX C SAMPLE LETTER OF UNDERSTANDING.

[24] As noted previously, the language of the current version of Rule 1.15(f) technically does not preclude having more than just one, single signature on a lawyer's client trust account—even where one of the two signatures might be that of a non-lawyer. Rule 1.15(f), in pertinent part, states "*…Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account* ***shall be personally signed by a lawyer****…directed by a lawyer…or one or more lawyers authorized by the law firm…*" [***emphasis*** added]. The Rule, then, to be technically accurate, does not say signed "***only*** *by a lawyer*" or "*by a lawyer* ***alone***", which leaves open the possibility of having someone else—in addition to "a lawyer"—with an authorized second of two required signatures on the client trust account. This practice is actually not uncommon in some larger law firms where, typically, the signature of a trusted, responsible non-lawyer office administrator, accounting manager, business manager, bookkeeper, legal assistant, paralegal, etc., may be required as one of two signatures required on any firm check(s) that might exceed some pre-determined/pre-designated, but otherwise nominal/comfortably-safe, amount, e.g., all firm checks are imprinted with two signature lines and a caption indicating "2 Signatures Required for Any Check Exceeding $2,5000". Such a practice is likely intended to prevent younger, less-experienced/untested lawyers (e.g., new associates, law clerks, etc.) from disbursing excessive sums—either innocently or not-so-innocently—when acting as "a lawyer" who is authorized to and "personally sign[s]" a firm check.

loved one, or trusted friend of the "Planning Lawyer" more closely involved and connected to the process of shutting down the law practice of the "Planning Lawyer".[25]

This second variation may also even be structured and arranged, in great part, early in the "Back-Up Plan[ning]" process, i.e., while the "Planning Lawyer" is still active and capable of making and checking on the viability of all of the arrangements, etc. The "Planning Lawyer" could perhaps consider arranging with all pertinent bank(s) that all of the "Planning Lawyer's" accounts must now, from some specified date forward, require two (2) signatures for any checks issued/written on those accounts, thus adding both the "Back-Up Lawyer" and the "Planning Lawyer's" spouse, family member, loved one or trusted friend as two (2) additional authorized signatures on the accounts in question.[26]

While this arrangement would perhaps serve to materially change/affect/encumber how the "Planning Lawyer" might do business on a day-to-day basis, i.e., now requiring two (2) signatures, instead of just that of the "Planning Lawyer", for any/all check(s) that are written from any of the "Planning Lawyer's" law office/client trust account(s), the benefits would be: 1) all arrangements regarding access to the bank account(s) are already in place, working and pre-approved by/acceptable to the bank(s) in question, long before anything ever potentially happens to the "Planning Lawyer"; 2) the "Planning Lawyer", by necessity, will now need to involve one or both of these specially-selected persons in some aspect(s) of the "Planning Lawyer's" regular, day-to-day operation of his/her law practice, thereby fostering and achieving some degree of familiarity with—and avoiding total surprise/ignorance as to—the details/workings of the bank account(s) of the "Planning Lawyer's" law practice; and 3) in the event of the "Planning Lawyer's" sudden/unexpected death, the other persons who would comprise the two (2) required signatures are already in place, authorized and approved by the pertinent bank(s), avoiding,

[25] Here, again, it is incumbent upon the "Planning Lawyer"—whenever reasonably possible—to recognize, address and lay to rest, as soon as practicable, any issues, potential problems, concerns and/or reservations that the non-lawyer spouse, family member, loved one, or trusted friend of the "Planning Lawyer" may have about this "Back-Up Plan" and/or with the chosen "Back-Up Lawyer", since this variation could also serve to provide a sticking point/stalemate/impasse to the intended quick and proper distribution of trust account funds to legally-entitled clients and third persons if/where the non-lawyer spouse, family member, loved one, or trusted friend of the "Planning Lawyer" chooses not to cooperate/fulfill the anticipated function(s), i.e., using a non-lawyer as a component of the "Back-Up Plan" is a potential "double-edged sword", capable of "cutting" both ways, and, as such, should be carefully considered and evaluated whenever there may be recognized/known issues between the "Back-Up Lawyer" and the non-lawyer spouse, family member, loved one, or trusted friend of the "Planning Lawyer". In short, for this to work correctly, everyone involved must be "on the same page" and a "team player".

[26] Once again, Rule 1.15(f) of the current Louisiana Rules of Professional Conduct would not prohibit having, as suggested in this variation, three (3) [or even more] authorized signatures on a lawyer's client trust account, as long as at least one of the two (2) signatures required for any check would be that of a lawyer. Under the circumstances being suggested, there would be two lawyers authorized to sign—i.e., the "Planning Lawyer" and the "Back-Up Lawyer"—and one non-lawyer authorized to sign, i.e., the "Planning Lawyer's" spouse, family member, loved one or trusted friend. As such, at least one of the two lawyers would need to sign any check(s), thereby meeting the requirements of Rule 1.15(f).

hopefully, any issue(s)/questions/additional steps that might otherwise be raised and need to be dealt with specially when dealing with the funds of a now-deceased account holder.[27]

Either of the two suggested variations would seem to offer a method for protecting the interests of third parties and clients with regard to the transition/disposition of their funds in the event of the "Planning Lawyer's" inability to continue with the practice of law while, at the same time, providing some degree of security and peace-of-mind to the "Planning Lawyer" with respect to the choice of a "Back-Up Lawyer" and the granting of otherwise unfettered legal access to the bank accounts of the "Planning Lawyer's" law practice.

Finally, even if the trust/risk issue noted above can be addressed in the "Back-Up Plan", it is still critically important for the "Planning Lawyer" to remember to consult with the bank(s) or other financial institution(s) where his/her law office bank accounts (operating and client trust) are located in order to ensure that each such bank or financial institution will actually accept and honor the terms of the Durable Limited Power of Attorney providing for signature authority on those accounts if and when the "Back-Up Plan" is ever triggered and invoked. Banks and financial institutions—and their respective legal departments—tend to have fairly idiosyncratic (sometimes highly conservative and/or draconian) policies and procedures with respect to how and when they might be willing to grant access to third-parties to funds being held by them for someone else, particularly when it comes to a lawyer's client trust account(s) (since even the banks know that the client trust account is intended to contain only funds that, for the most part, do not even legally belong to the lawyer who has opened and otherwise administers the account).

So, the "Planning Lawyer" should definitely check with each bank or financial institution before finalizing the "Back-Up Plan" and the legal Durable Limited Power of Attorney documents so that any unique or special bank policies/requirements/forms can be addressed and incorporated into the planning and related documentation. For example, despite the advance preparation and execution of a valid, legal Durable Limited Power of Attorney giving the "Back-Up Lawyer" signature authority over the bank account(s) in question, the bank may still want and require the "Planning Lawyer" to obtain and provide the signature of the "Back-Up Lawyer" on one of the bank's own bank account "signature cards", to be held on-file by the bank until such time as the "Back-Up Plan" is triggered and the legal Durable Limited Power of Attorney document is actually presented to the bank. It would be a real shame—and may help to ruin, in part, the benefits of the advance planning done by the "Planning Lawyer"—if the "Back-Up Lawyer" is ultimately stymied in his/her efforts to shut down the law practice of the "Planning Lawyer" by encountering some quirk or issue with gaining access to the "Planning Lawyer's" client trust account or law office operating account that perhaps

[27] As will be covered in another section of this Handbook, unlike the other six of the "Seven D's", the sudden/unexpected death of the "Planning Lawyer" may very likely still serve to terminate/void/nullify even an otherwise-valid Durable Limited Power of Attorney granted by the now-deceased "Planning Lawyer" prior to his/her death—unless the "Planning Lawyer" has also taken steps, during life, to include a clause/section in his/her Last Will and Testament expressly naming/appointing the "Back-Up Lawyer" as such (i.e., as a "Special, Limited Administrator" of the "Planning Lawyer's" estate) in the event of the testator's death, or, alternatively, including a clause in the Last Will and Testament expressly naming/appointing a spouse, family member, loved one or trusted friend as the succession representative and ensuring, during life, by both oral and written instructions, that the person named as succession representative knows, understands and agrees to and will engage the services of the named "Back-Up Lawyer" to assist with the closure and shutdown of the "Planning Lawyer's" law practice.

could have been easily avoided and addressed while the "Planning Lawyer" was still fully in control and able to address such issue(s) in-person.

vi. Informed Consent of Clients / Conflicts of Interest

Given that the "Planning Lawyer" will, by necessity, be revealing and giving to the "Back-Up Lawyer" unfettered access to confidential information of clients, prudence would suggest that the "Planning Lawyer" seek/obtain informed consent, in writing, from all of the "Planning Lawyer's" clients regarding the existence and possibility of the needed activation of the "Planning Lawyer's" "Back-Up Plan" and as to the lawyer(s) designated therein as "Back-Up Lawyer(s)".[28] This can/should also be done without exception in connection with each/every new client accepted by "Planning Lawyer" from that point forward by including notice of the "Back-Up Plan", etc., within all new engagement letters.[29]

While that informed consent—arguably—may not be required, since this planning/contingency may be **impliedly authorized** in order for the "Planning Lawyer" to carry out—at least a portion/segment of—the representation in the event of sudden/unexpected disability/impairment/death, seeking/obtaining the informed consent, in writing, of all clients well in advance (**best practice would be to do so at the time of initial engagement[30]) would very likely/probably help to avoid a number of issues/concerns/questions/problems for the "Back-Up Lawyer" if/when the "Back-Up Plan" is ever triggered [e.g., clients wondering/worried/distrustful about the sudden appearance/involvement of some other lawyer whom they have never heard of/met/been informed about by the "Planning Lawyer"].

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[28] Rule 1.6(a) of the current Louisiana Rules of Professional Conduct states:

*(a) A lawyer shall not reveal information relating to the representation of a client **unless the client gives informed consent**, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).[**emphasis** added].*

[29] See APPENDIX F SAMPLE ENGAGEMENT LETTER LANGUAGE.

[30] Rule 1.4 of the current Louisiana Rules of Professional Conduct, in pertinent part, states:

…(a) A lawyer shall:…

…(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law…

…(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued…

Given that the "Back-Up Lawyer" ideally should not (and very likely may not intend to) assume/take on full/complete/permanent professional responsibility for all of the "Planning Lawyer's" clients and their legal matters—but, instead, may only be interested in/willing to do whatever is needed/necessary to allow them to transition to new/different lawyers (i.e., serving merely as a "temporary transitional lawyer")—it is very important that the "Planning Lawyer" make an effort to include, as part of the lawyer-client contract/engagement agreement(s) for all of that "Planning Lawyer's" clients, **a limited scope representation clause[31] effectively limiting the scope of the representation to be provided by the "Back-Up Lawyer" if/when the "Back-Up Plan" is ever needed/triggered.**[32] In other words, the clients indicate that they understand, agree and acknowledge in writing that the "Back-Up Lawyer" will serve primarily/strictly only as a "temporary stand-in/transitional lawyer" for purposes of allowing for time/affording an opportunity to those clients to transition to new/different lawyers. And, if for some reason the client and "Back-Up Lawyer" might choose, instead, to continue in a more permanent/on-going client-lawyer relationship, a separate, brand-new lawyer-client contract/engagement agreement will then need to be executed by them, independent of the "Back-Up Plan" and the original lawyer-client agreement executed between that client and the now-impaired/disabled/missing/disciplined/deceased "Planning Lawyer".

While the "Planning Lawyer" and "Back-Up Lawyer" will not be able to anticipate every possible/potential conflict of interest that may exist and/or arise between the "Back-Up Lawyer" and clients acquired by the "Planning Lawyer" subsequent to drafting/executing the "Back-Up Plan", it is prudent and incumbent upon the "Planning Lawyer" to attempt to identify/note any/all pertinent conflicts at the inception of the "Planning Lawyer's" acquisition of each new client, i.e., checking with the prospective client to see if the prospective client has any known issue(s)/conflict(s) with the "Back-Up Lawyer" (or with any other lawyer in the "Back-Up Lawyer's" own law firm, if the "Back-Up Lawyer" is not also a solo practitioner – see Rule 1.10 of the Louisiana Rules of Professional Conduct[33]).

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[31] See APPENDIX E SAMPLE LIMITED SCOPE REPRESENTATION LANGUAGE.

[32] Rule 1.2 of the current Louisiana Rules of Professional Conduct, in pertinent part, states:

> *…(a) Subject to the provisions of Rule 1.6 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation…*
>
> *…(c)* ***A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent****…[****emphasis*** *added].*

[33] Rule 1.10 of the current Louisiana Rules of Professional Conduct, in pertinent part, states:

> *…(a)* ***While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9****, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm…*

If any such conflicts or potential conflicts are discovered, the "Planning Lawyer" may wish to consider options to try and avoid/anticipate such conflicts of interest for the "Back-Up Lawyer" in the event that the "Back-Up Plan" is ever triggered/effectuated: 1) consider perhaps declining representation of this prospective client (or, at least—if possible/appropriate—this particular matter for this prospective client); 2) consider whether the conflict can be properly waived/consented to by the informed consent in writing of the prospective client (and all other affected clients) and the "Back-Up Lawyer";[34] or 3) consider whether an alternate/additional "Back-Up Lawyer" for this conflict and/or other conflicts may be available/possible (i.e., a "Conflicts/Alternate Back-Up Lawyer").

Once again, any/all obvious/apparent conflicts with regard to the prospective client and the "Back-Up Lawyer" should be specifically noted and, if informed consent thereto is permissible/obtainable, included within the written lawyer-client agreement/engagement agreement between the "Planning Lawyer" and prospective client prior to or at the beginning of that representation by the "Planning Lawyer".

vii. Reasonable Compensation of the "Back-Up Lawyer"

While it is conceivable that the "Planning Lawyer" may actually know and/or find someone to serve as "Back-Up Lawyer" who is willing/able to do so without ever expecting or receiving any form of compensation for those efforts, it is more realistic to believe that the poor, unfortunate soul who will be agreeing to take on another lawyer's law practice—the good, the bad and the ugly—even if just for a "transitional period" until the clients can find new, different lawyers, etc., will need to be reasonably compensated for the time and efforts that will be required to shut down the "Planning Lawyer's" law practice properly. Honestly, it would seem incredibly unfair, terribly burdensome and wholly unrealistic for the "Back-Up Lawyer" to accept all of the risk and headaches that are sure to

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*…(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7…[**emphasis** added].*

[34] Rule 1.7 of the current Louisiana Rules of Professional Conduct states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives, informed consent, confirmed in writing.

accompany the task in question without some form of reasonable remuneration.

As such, compensation for the "Back-Up Lawyer" should also be addressed and detailed within the "Back-Up Plan". Essentially, the "Planning Lawyer" will agree to compensate the "Back-Up Lawyer" reasonably for his/her time and efforts.[35] Ideally, the "Planning Lawyer" will have also planned for and set aside/saved some of his/her own funds just for this purpose, even discussing in advance with the "Back-Up Lawyer" what the "Back-Up Lawyer" would consider to be a fair and reasonable fee for the proposed task of shutting down the "Planning Lawyer's" law practice—i.e., agreeing upon some form of reasonable "flat fee" for the closure of the "Planning Lawyer's" law practice. Alternatively, given that not every lawyer will be comfortable with a "flat fee" arrangement, the "Planning Lawyer" and "Back-Up Lawyer" should consider discussing and trying to agree upon a reasonable hourly rate for the proposed services of the "Back-Up Lawyer" if and when called upon to shut down the law practice of the "Planning Lawyer". In either case, frank, serious fee discussions between the "Planning Lawyer" and "Back-Up Lawyer" during the process of preparing the "Back-Up Plan" will definitely help the "Planning Lawyer" to anticipate better how much money might be needed and should be set aside for the event in question, if and when it might ever occur. Under either of these scenarios, the "Back-Up Lawyer" effectively functions as an "independent contractor" who comes in to close down the law practice of the "Planning Lawyer" and is paid for those services from the funds of the "Planning Lawyer"—both funds already on hand and those funds that may still be collected as accounts receivable from clients who might still owe fees and/or costs to the "Planning Lawyer" even after the "Planning Lawyer" is unable to provide further legal services.

One possible alternative, depending upon the type of law practice involved—especially if the "Planning Lawyer" does not generally have a very adequate cash flow and cannot realistically set aside a lump sum to pay the "Back-Up Lawyer"—might be to consider some form of limited "fee sharing" arrangement, again conditioned upon and strictly limited in scope to the "Planning Lawyer's" sudden/unexpected inability to continue in the practice of law because of an encounter with one or more of the "Seven D's". Conceptually, the "Planning Lawyer" and the "Back-Up Lawyer" would effectively be splitting or sharing the legal fees earned from the representation of the "Planning Lawyer's" clients until such time as the clients find and hire new lawyers, or the clients' matters are naturally concluded, whichever comes first—with the "Planning Lawyer" being entitled to whatever fee(s) may have been earned by the "Planning Lawyer" before and until the "Planning Lawyer" is no longer able to continue with the representation, and with the "Back-Up Lawyer" being entitled to whatever portion of the fee(s) might represent the work/time provided by the "Back-Up Lawyer" on the client's matter(s) during the transition period between the "Planning Lawyer's" inability to proceed with the representation and the client's hiring a new, different lawyer to take over and continue with the representation (or the natural conclusion of the client's matter(s), if that occurs sooner). This may not be realistic or very fair to the "Back-Up Lawyer" in some situations, especially where most or all of the clients quickly find and move their files to new lawyers. So, some meaningful thought should be given to the value/benefit of doing this, depending upon the type of practice, cases, clients, etc.

For a division of fee(s) between lawyers who are not in the same firm, current Rule 1.5(e) of the

[35] See Paragraph 5 of the sample "Agreement to Close Law Practice" in APPENDIX A.

Louisiana Rules of Professional Conduct would require that: 1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; 2) the total fee is reasonable; and 3) each lawyer renders meaningful legal services for the client in the matter. So, in order for such a "fee sharing" arrangement to work within the context of the "Back-Up Plan", the "Planning Lawyer" would effectively need to incorporate a limited scope representation clause within the written fee agreement for each/every client, whereby the client indicates that the client understands, agrees to and acknowledges that the "Back-Up Lawyer" will share in the representation of the client only if and when the "Planning Lawyer" is unable to proceed with the representation of the client by virtue of the "Planning Lawyer's" encounter with one or more of the "Seven D's" and, only under those circumstances, the "Back-Up Lawyer" will receive a portion of the total fee in proportion to the meaningful legal services ultimately rendered by the "Back-Up Lawyer" for the client in the matter. Obviously, this type of limited scope "fee sharing" arrangement will require significantly more advance care and attention to detail with respect to the drafting and execution of each written fee agreement with each client of the "Planning Lawyer" but that work will conceivably help to avoid the need for the "Planning Lawyer" to try and "squirrel away" enough funds for the "rainy day" when he/she might encounter one or more of the "Seven D's". As each lawyer and each law practice is different, there will likely be no one way alone that will suit/fit every lawyer. However, it is still very important for the "Planning Lawyer" and "Back-Up Lawyer" to consider and discuss how the "Back-Up Lawyer" will be compensated if and when the time comes.

Another possible alternative for the "cash-challenged" "Planning Lawyer" to ensure that there will be adequate funds available to pay for the services of the "Back-Up Lawyer" would be for the "Planning Lawyer" to consider purchasing a small life insurance policy, naming the "Back-Up Lawyer" as the beneficiary or naming the "Planning Lawyer's" spouse, family member, loved one or trusted friend as the beneficiary with explicit instructions to use the proceeds of the policy to compensate the "Back-Up Lawyer" for his/her efforts in closing and shutting down the law practice of the now-deceased "Planning Lawyer".[36] Likewise, some of the proceeds of an adequate disability insurance policy purchased by the "Planning Lawyer" could perhaps be used to help compensate the "Back-Up Lawyer" in the event of the "Planning Lawyer's" disability and inability to continue to practice law.

viii. The Biggest, Most Serious "D" of "the Seven D's"

By now, if you have been carefully, steadily reading along from page 1 of this Handbook[37], it is

[36] Here, again, it is imperative that the "Planning Lawyer" make diligent efforts to explore and address as soon as practicable any issues, concerns or reservations that his/her spouse, family member, loved one or trusted friend may have with respect to carrying out this request/directive. Otherwise, there is the risk that the "Back-Up Lawyer" may ultimately not be compensated if/when the "Planning Lawyer's" spouse, family member, loved one or trusted friend chooses not to use the proceeds of the special life insurance policy to pay the "Back-Up Lawyer" because of some unaddressed issue/problem that person may have with the "Back-Up Plan" and/or the "Back-Up Lawyer".

[37] Your patience and tolerance are clearly exceeded only by your apparently-very-real need to know how to do the things covered herein.

important to answer the question(s)/concern(s) that have very likely been raised in your mind, i.e., is all of this careful, detailed planning, etc., that is being discussed and recommended herein somehow affected if and when the "Planning Lawyer" dies? The answer, unfortunately, is a less-than-comforting "more than likely, unless you have anticipated and also planned accordingly for that". Under current Louisiana law[38], the death of a "principal" terminates any mandate/agency granted during that person's life, including any otherwise "durable" power(s) of attorney—as "durable" generally, effectively means only "continues on/remains in effect even in the event of the grantor's incapacity and/or disability". So, unfortunately (as in most other jurisdictions outside of Louisiana), the death of the "principal" [for our purposes herein, the "Planning Lawyer"] will normally, legally result in the termination of any powers and authority granted in any power(s) of attorney [for our purposes herein, the "Back-Up Plan" and/or "Durable Limited Power of Attorney for Banking Access and Signature Authority"] to any agent/"mandatary". So, "survivability" is still a very real issue and concern with respect to comprehensive planning.

However, if the "Planning Lawyer" also plans carefully and purposefully for the most serious "D" of the previously-noted "Seven D's"—what some folks may colloquially refer to as "the Big D", i.e., Death—it may be possible, in effect, to "keep the Plan alive", even after the "planner's" death. This additional planning is likely most pertinent to and especially important for lawyers who are sole practitioners, given that there will generally be no other lawyer normally available to step in if and when the sole practitioner dies, particularly if that lawyer's death is sudden and unexpected.

For these reasons, it is critical that the "Planning Lawyer"—most especially the sole practitioner—prepare and execute properly an up-to-date Last Will and Testament, ideally specifically: 1) naming an Executor/Succession Representative; 2) empowering the Executor/Succession Representative to aid in the closure and shutdown of the testator's/"Planning Lawyer's" law practice by engaging the services of the "Back-Up Lawyer"; and 3) to that end, referencing and incorporating the terms and conditions of the "Back-Up Plan" and "Durable Limited Power of Attorney for Banking Access and Signature Authority" into that Last Will and Testament, indicating an express intent and desire to have those terms and conditions survive even the death of the testator/"Planning Lawyer". A proposed generic sample of such language is included herein in "APPENDIX L" of this Handbook.

[38] Article 3024 of the current Louisiana Civil Code states:

> *In addition to causes of termination of contracts under the Titles governing "Obligations in General" and "Conventional Obligations of Contracts",* ***both the mandate and the authority of the mandatary terminate upon the: (1) Death of the principal or of the mandatary****. (2) Interdiction of the mandatary. (3) Qualification of the curator after the interdiction of the principal.* [***Emphasis*** added].

D. Activation of the Back-Up Plan

Assuming that the "Planning Lawyer" and "Back-Up Lawyer" have been reasonably prudent and thoughtful in the planning process and with the arrangements made, one can only hope and pray that these arrangements may never need to be actually invoked, i.e., that the "Back-Up Lawyer" is never called to duty because the "Planning Lawyer" remains in reasonably good health and of sound mind, living to a ripe, old age after an appropriate self-orchestrated retirement and unhurried, voluntary shutdown (and/or sale) of his/her own law practice. But one can also rest somewhat comfortably knowing that, in the event of the unwanted/unanticipated/unthinkable, a plan has been made and total chaos should not rule the day.

Should events occur so as to trigger activation of the "Back-Up Plan", the "Back-Up Lawyer" will need to step in and proceed with the shut-down of the "Planning Lawyer's" practice in accordance with the terms of the "Back-Up Plan". Assuming the "Back-Up Plan" has been modeled upon the basic sample form included here in APPENDIX A, those steps would very likely include:

1) Entering "Planning Lawyer's" law office(s) and, with the assistance of "Planning Lawyer's" staff (if any), using "Planning Lawyer's" "Law Office Procedures Manual", equipment and supplies, as needed, to close the law practice of "Planning Lawyer" as expeditiously as appropriate;

2) Opening "Planning Lawyer's" mail and processing it;

3) Taking possession and control of all property comprising "Planning Lawyer's" law office(s), including client files and records;

4) Examining professional calendar, client files and records of "Planning Lawyer's" law office(s) and obtaining information about any pending matters that may require attention—prioritizing matters/files according to urgency and time constraints;

5) Notifying clients, potential clients and others who appear to be clients that "Planning Lawyer" is no longer able to continue in the practice of law, that "Planning Lawyer" has given advance authority to "Back-Up Lawyer" to close "Planning Lawyer's" law practice and communicate such notice, and that it is now in their best interests to seek and obtain other legal counsel;[39]

6) Copying the files of "Planning Lawyer" (if needed) and "Planning Lawyer's" clients so that the original files may be properly surrendered to the appropriate clients or their new lawyers;

7) Obtaining client consent to transfer client files and client property to new lawyers;

8) Transferring client files and property to clients or their new lawyers;

9) Obtaining client consent to obtain extensions of time/continuances and contacting opposing counsel, courts/administrative bodies and others to obtain extensions of time/continuances;

10) Applying for extensions of time/continuances pending employment of other counsel by clients;

[39] See APPENDIX G SAMPLE LETTER ADVISING THAT PLANNING LAWYER IS UNABLE TO CONTINUE WITH LAW PRACTICE (Sent by "Back-Up Lawyer" or other 3rd Party/"Receiver Lawyer").

11) Filing notices, motions and/or pleadings on behalf of clients when their interests must be immediately protected and other legal counsel has not yet been retained;

12) Contacting all appropriate persons and entities who may be affected and informing them that "Planning Lawyer" has given this authorization;

13) Arranging for transfer, storage/electronic scanning and/or appropriate destruction of closed files;

14) Winding down the financial affairs of "Planning Lawyer's" law practice, including, but not limited to, providing to the clients of "Planning Lawyer" a final accounting and statement of legal services rendered by "Planning Lawyer", return of client funds, billing/collection of as-yet-unpaid fees, costs and expenses on behalf of "Planning Lawyer" and/or "Planning Lawyer's" estate, and closure of business accounts when appropriate;

15) Arranging for an appraisal of "Planning Lawyer's" law practice for the purpose of selling those assets and for the benefit of "Planning Lawyer's" estate;

16) And any/all other tasks, duties, responsibilities or acts which may be reasonable in closing the law practice of "Planning Lawyer".

The foregoing list, of course, contains only basic/generic guidelines. Each individual law practice will be different and have special or unique items/issues that will also need to be addressed during the shut-down process. Hopefully, these special/unique things have been considered as part of the "back-up" planning process and relevant details included within the "Law Office Procedures Manual", thereby perhaps making it less difficult for the "Back-Up Lawyer" to move forward with the shut-down process.

For additional tips/guidelines while shutting down a law practice, one should also consider reviewing the "*Retirement From Law Practice Checklist*" contained hereafter in Part One, Section 2.A of this Handbook.

Section 2. Retirement

Well, if you've just skipped ahead to and/or you're reading this section, too, there is a high likelihood that you have perhaps managed to escape/avoid a "run-in" with one or more of the "Seven D's"[40] and are now looking to take a well-deserved rest from a long, hard-working career as a practicing lawyer. Perhaps you have also already (hopefully, long ago) taken the time to do the advance planning recommended in Section 1 of this Handbook. If so, rest assured that your efforts and contemplation of an unexpected/untimely situation have not been wasted—much of what you have already done/considered will help you to carry out the tasks that now lie before you.

[40] Defined in Section 1 of this Handbook: the "Seven D's": **D**eath; **D**efeat; **D**isability; **D**isappearance; **D**iscipline; **D**isaster; and **D**isease.

A. Retirement From Law Practice Checklist

Once the decision to retire has been made, the lawyer will need to do a variety of things in order to shutdown the law practice:

1) Close/complete work in as many active client files as possible.

2) Communicate in writing with all clients for whom you have active files, advising them of your impending retirement and, as a consequence, that you will be unable to continue representing them, so they will need to locate and retain a new lawyer.

   Your written communication should inform the client about time limitations and time frames important to the client's case. The written communication should explain how and where the client can obtain the client's file and should give a time deadline for doing this. (See APPENDIX H SAMPLE LETTER ADVISING THAT "PLANNING LAWYER" IS CLOSING HIS/HER OWN LAW PRACTICE.) If you are comfortable/reasonably confident in doing so, consider referring the client to another lawyer (and/or to the local bar association's lawyer referral service for referrals to another lawyer [see https://www.lsba.org/Members/BarAssociations.aspx for contact information for local bar associations in Louisiana]) who may be able to handle the client's matter(s).

3) For cases that have pending court dates, depositions, or hearings, discuss with the client how to proceed. Where appropriate, request extensions, continuances, and/or new hearing dates, with appropriate notice to opposing counsel. Send copies and written confirmations of these extensions, continuances, and new dates to opposing counsel and to your client.

4) For cases before administrative bodies and courts, obtain the client's permission to submit a Motion and Order to Withdraw as (and/or Substitute) Counsel of Record. Review and follow Rule 1.16 of the current Louisiana Rules of Professional Conduct[41] with respect to all ethical obligations upon termination of representation.

5) In cases where the client will be engaging a new lawyer, coordinate drafting and filing a Motion to Withdraw as/Substitute Counsel of Record with the new lawyer.

6) Pick an appropriate date and check to verify that all open/active cases have either a Motion and Order allowing you to withdraw as counsel of record or a Motion and Order to Withdraw as and Substitute Counsel of Record.

7) Make copies of each client file for your own benefit/protection.[42] **Surrender the <u>original</u> file to the**

[41] In particular, note that Rule 1.16(c) of the current Louisiana Rules of Professional Conduct requires: *"…(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation…"*

[42] One should strongly consider the benefits/efficiency/speed/cost-effectiveness of electronically scanning—rather than photocopying—client files for long-term retention and storage. Rather than incurring potentially-significant copying and storage costs for numerous physical paper files, one can very easily/inexpensively scan all client file

client.[43] Each client should either: 1) pick up the client's file(s), signing a receipt acknowledging the lawyer's surrender of the original file(s) directly to the client (See APPENDIX K SAMPLE CLIENT'S ACKNOWLEDGMENT OF RECEIPT OF LEGAL FILE(S)); or 2) sign a written authorization for you to release and send the file(s) directly to the client himself/herself (See APPENDIX J SAMPLE CLIENT'S REQUEST FOR DIRECT SURRENDER OF LEGAL FILE(S)); or 3) if preferred/requested by the client, sign a written authorization for you to release and send the file(s) directly to the client's new lawyer(s) (See APPENDIX I SAMPLE CLIENT AUTHORIZATION FOR TRANSFER OF LEGAL FILE(S) TO NEW LAWYER).

Remember that **any/all relevant original documents**—even if not normally stored/kept by you within the file itself (e.g., wills/notarial testaments/etc., stock certificates, x-rays/medical records, etc., perhaps stored in an office safe, vault or safe deposit box) **should also be returned to the client or to the client's new lawyer**, as appropriate, with appropriate signed, written acknowledgements for same, and copies should be kept with/in your own copy of the file.

8) For those client files that are still not retrieved by the client or the client's new lawyer, each client should be informed in writing where/how and for how long the client's file(s) will be stored and who should be contacted in order to retrieve the client's file(s). If you have had and followed a reasonable file retention/destruction policy[44] which is already in place (and clients have all been previously informed of and acknowledged same in writing), you may appropriately destroy any closed client files in keeping with that file retention/destruction policy.

   If you have not had such a file retention/destruction policy, you should now seek and obtain signed, written permission from the client for you to destroy the client's file(s) at a point five years after the matter has been concluded or the representation has been terminated. Some special types of client files may still need to be retained for periods longer than five (5) years due to relevant prescriptive periods, etc. For example, files for matters involving immovable property rights and/or matters involving the rights/interests of minor children, convicted/incarcerated criminal defense clients, etc., may need to be retained by the lawyer for periods greater than just the basic five (5) years following the conclusion of the matter or termination of the representation. If a closed client file is to be stored by another lawyer, you should seek and obtain the client's permission in writing to allow that other lawyer to store the file, as well as provide the client with that other lawyer's name, address, telephone number and email address—remember the information inside of that file, even a closed file, is still considered confidential

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materials into digital "PDF" format. Digital copies of scanned client files can then be kept, stored and duplicated on a relatively-inexpensive, solid-state, portable computer hard drive—which is extremely portable, durable and does not take up any more space than a small hard-cover book. Prudence would suggest buying and using at least two (2) portable hard drives so that one has a "back-up"/extra copy of all of the scanned files. Then, too, there is also the option of also storing electronic copies of client files—in addition to using the solid-state, portable hard drive(s)—in "the Cloud", i.e., an off-site, Internet-based, monthly-fee-based storage plan. While not required, this "cloud" storage option, in addition to using the portable hard drive(s), is a recommended "best practice"/"belt-and-suspenders" approach.

[43] See LSBA Public Ethics Advisory Opinion 05-LSBA-RPCC-003 PUBLIC Opinion (4/4/2005), *Surrender of Client File Upon Termination of Representation*.

[44] See LSBA Public Ethics Advisory Opinion 06-LSBA-RPCC-008 PUBLIC Opinion (1/4/2006), *Client File Retention*.

and the property of the client.

9) Consider publishing in the classified advertisements section of the local newspaper, and within the ***Louisiana Bar Journal***, the name, address, telephone number and email address of the person who will be entrusted with the remainder of your closed files, if you will not continue (or be able to continue) to retain them yourself for the appropriate retention period(s) as needed. Again, remember that even closed client files contain client confidential information, so any custodian in your stead should be chosen carefully and should understand your/their continuing duty to maintain and protect client confidentiality with respect to the files in question.

10) If you are a sole practitioner and your office telephone number will be disconnected when you retire, consider contacting your telephone service provider and making arrangements for a limited-term "call forwarding message", providing another contact telephone number for you (e.g., your cell phone number or home telephone number) if and when your old office telephone number might be called. Alternatively, consider arranging for limited-term "call forwarding", having any calls to your old office number automatically routed to/"call forwarded" invisibly to either your home telephone, cell phone or even to a lawyer who may be assisting with the shutdown of your office. This will assist your clients if they attempt to contact you after you have shut down your office.

11) Disburse funds held in your client trust account(s) to the appropriate clients with a final accounting. With client consent, confirmed in writing, you can also deliver the funds directly to a new lawyer designated by the client.

12) Once you have disbursed all funds from your client trust account(s), i.e., the balance is zero, you can consider closing your client trust account(s). However, since IOLTA client trust accounts in Louisiana are normally "no fee" bank accounts, i.e., no regular account service charges/monthly fees should be charged to you simply to maintain the account, you may wish to consider keeping/leaving the IOLTA client trust account open for a few additional years simply to have the ability to process/disburse appropriately any stray payment(s)/fund(s) that might suddenly (re)appear even after you have otherwise closed your law practice.[45] It should also be noted that any changes or additions to your client trust account(s) are required to be reported to both the Louisiana Bar Foundation (www.raisingthebar.org) and the Louisiana Attorney Disciplinary Board (www.LADB.org) within

[45] In Louisiana, there are still a number of "deposit courts" which require litigants or their lawyers to "deposit" a certain sum with the clerk of court in order to file a lawsuit or other pleading, which sum is quite often more than simply the actual cost for just filing the lawsuit or pleading itself. As a consequence, remaining funds may be held by the clerk(s) of court for any number of years after the initial "deposit" was first made, only to be released/disbursed/refunded to the litigants or lawyers if and when the clerk(s) of court finally do so by operation of law, policy, choice, necessity or perhaps simply divine providence. Because of this system, it is not uncommon for litigants—or their lawyers who may have paid/made the initial "deposit"—to receive unexpectedly some long-forgotten amount in the form of a check from a clerk of court years after the underlying matter has been finally concluded or abandoned without further action. Even under these circumstances, the lawyer who might come into possession of such funds is obligated to safeguard and deliver those funds to their rightful owner—quite often, the client—and having/using the IOLTA client trust account is the most appropriate means of accomplishing that task. See also LSBA Public Ethics Advisory Opinion 06-RPCC-009 PUBLIC Opinion (3/1/2006), *Funds or Property of Missing Client*.

thirty (30) days of any such change or addition[46]—that would include closure of the client trust account(s).

13) If there are any "unidentified funds" remaining in your client trust account(s), Rule 1.15(h) of the current Louisiana Rules of Professional Conduct requires that they "*…must [be] remit[ted]…to the Louisiana Bar Foundation…*" Rule 1.15(g)(7) states "*… 'Unidentified Funds' are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person or law firm…*" These are not funds in an IOLTA client trust account that can be identified as belonging to—but are simply "unclaimed" by—a client or third party. Unlike "unidentified funds", funds that clearly belong to a client or third-party and that are just "unclaimed" (for example, because the client is missing or the lawyer can no longer find/locate the client), then, must be dealt with and handled differently. As a last resort, "unclaimed funds" may be delivered to/deposited with the Unclaimed Property Division for the Department of the Treasury for the State of Louisiana.

14) Call the LSBA Membership Department at (504) 566-1600/toll-free 1-800-421-5722 and update all of your contact information and membership records within thirty (30) days of the change.[47]

15) If you are lucky enough to have been a member of the LSBA, i.e., licensed to practice law in Louisiana, for at least fifty (50) years, (you may very likely already know that) you are no longer required to pay annual dues to the LSBA.[48] So, even if you are retiring from the private practice of law—i.e., closing your law office for good—if you have been licensed in Louisiana for at least fifty (50) years and wish to remain on "active" status—which means you can still engage in the practice of law, even if you don't want to re-open a full-time law practice—you will not be required to pay any more bar dues to the LSBA.[49] Having/keeping your long-time law license "active"—just in case you might need or want to use it for something special or on an occasional basis—may be something to consider, even if

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[46] Under Section 8(C) of current Rule XIX of the Rules of the Supreme Court of Louisiana, "*…Each lawyer shall file with the Louisiana Bar Foundation and Louisiana Attorney Disciplinary Board any change or addition to trust or escrow account information within thirty (30) days of the change or addition…*"

[47] Under Section 8(C) of current Rule XIX of the Rules of the Supreme Court of Louisiana, "*…Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical or office email address within thirty days of the change…*"

[48] Section 2, Article I of the current By-Laws of Louisiana State Bar Association, in pertinent part, states "*…Active members who have been admitted to the Louisiana State Bar Association for 50 years or more shall be exempt from the payment of dues…*"

[49] See also §3 of Rule XIX of the Rules of the Supreme Court of Louisiana (as of November 2017), which states, in pertinent part: "*…**A lawyer who is retired** or on inactive status **shall not be obligated to pay the annual fee imposed by Rule XIX upon active practitioners**…*" [***emphasis*** added]. So, it seems "retirement" from active law practice may also allow one to escape/avoid the normally-continuing obligation to pay annual disciplinary assessments to the Louisiana Attorney Disciplinary Board. However, verification of this policy directly with the Louisiana Attorney Disciplinary Board at the time of your actual "retirement" from the practice of law would be most prudent and highly recommended.

you are otherwise closing down your law practice for good (or, at least, for the foreseeable future).[50]

16) If you wish to change your law license to "inactive" status—which means you cannot engage in anything that would be considered the practice of law during that period of "inactive status", i.e., you effectively cannot practice law, represent clients, etc., in any way[51]—you must first send a written request seeking to go on "inactive status" [52] to the LSBA Secretary, c/o the LSBA Membership Department, 601 St. Charles Avenue, New Orleans, LA 70130.[53]

17) Contact Gilsbar (https://www.gilsbarpro.com/Home;1-800-906-9654) or your other professional liability insurance carrier about necessary continued malpractice coverage. Look into purchasing an "Extended Reporting Endorsement" ("ERE") for your existing malpractice policy. An "ERE" is commonly referred to as a "tail policy" or "tail coverage". As the name implies, an "ERE" extends the period during which you may report a claim to your malpractice carrier, including claims that only surface after you have already closed down your law practice. Discuss with your carrier the appropriate/available period(s) of time for an "ERE". The cost for an "ERE" is typically a one-time premium.

18) If you do not own your own office building/space, properly terminate your office lease in accordance with the terms of that lease. You will need to notify your landlord of your decision to move. You may need to negotiate early termination terms.

19) If you actually own your own office building or office space, you will need to consider and decide whether to sell it or whether you might wish to become a landlord, perhaps even for another lawyer looking for office space. This second option could also potentially serve as a means/avenue for transitioning some portion(s)—or even a great portion—of your law practice over to another lawyer who will become your tenant and occupy your former office space. That lawyer-tenant may have an interest in purchasing your entire law practice or an area of your law practice,[54] and/or leasing some of your equipment, furniture and fixtures, as well as possibly taking over representation of some of your clients. This may not be possible—or reasonable—in all cases but it is certainly something to

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[50] It is highly recommended, however, that if you choose to retire and keep your law license "active", that you also consider regularly attending continuing legal education ("CLE") to help maintain your legal competence and ensure that you are as "up-to-date" as possible regarding changes/developments in the law, etc.

[51] Section 5, Article IV of the current Articles of Incorporation of the Louisiana State Bar Association states "*…No person shall practice law in this State unless he/she is an **active** member, in good standing, of this Association…*" [***emphasis*** added].

[52] See APPENDIX P SAMPLE LETTER TO LOUISIANA STATE BAR ASSOCIATION SEEKING/REQUESTING "INACTIVE" STATUS.

[53] Section 4, Article IV of the current Articles of Incorporation of the Louisiana State Bar Association states "*…Any member in good standing may be enrolled as an inactive member upon his written request to the Secretary, who then shall notify the Supreme Court accordingly…*"

[54] See APPENDIX M Current (2017) Louisiana Rules of Professional Conduct: Rule 1.17. Sale of a Law Practice (effective 07/01/2016).

consider and explore when planning for retirement from the practice of law.

20) Similarly, arrange for termination of any office equipment leases (e.g., leases for copier(s), printer(s), furniture, etc.), subscriptions for legal publications and/or computerized legal research services (e.g., Lexis, Westlaw, etc.), computer software/hardware, and for the removal of the leased equipment as per the terms/instructions of the equipment lease(s)/lessor(s).

    It is important to remember that most printers, scanners, copiers, etc., now have built-in memory and/or may interface in some way with your office computer(s)—which means they may very likely have some confidential client data stored within that built-in memory. Be sure to reset/"wipe" any confidential client data from the built-in memory of these pieces of office equipment before returning them to the lessor(s), or if you own the equipment, before selling, leasing or donating the equipment to someone else.

21) Accounting records. Retain your accounting records for potential IRS review, as they may be necessary to prove income, expenses, deductions, etc., especially in the event of an audit. Ask your CPA or accounting/tax professional for current/up-to-date advice concerning appropriate tax-related retention period(s).[55] Note also that Rule 1.15(a) of the current Louisiana Rules of Professional Conduct, in pertinent part, states "*...Complete records of [client trust accounts] and other [client] property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation...*" So, at a minimum, the Louisiana Rules of Professional Conduct (as of November 2017) would require you to maintain virtually all of the same accounting records for your client trust account(s) for at least five (5) years after termination of representation or, in this case, at least five (5) years after your actual retirement from the practice of law (assuming you have formally terminated representation at that point).

[55] Currently, seven (7) years is what is normally recommended as the retention period for records for the IRS. See also https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/How-long-should-I-keep-records. But check with a qualified, competent tax professional at the time of your actual retirement to confirm what would be appropriate for you at that time.

Section 3. Lifestyle/Career Change

It is not inconceivable that some lawyers will choose not to stay fully immersed within the practice of law—or will even choose to leave the practice of law and surrender their law licenses altogether—long before reaching a stage of life historically reserved for traditional retirement. The practice of law is, indeed, a "jealous mistress"[56] and exacts a heavy price from anyone who would seek to thrive, prosper and succeed within the profession. Not surprisingly but unfortunately, lawyers—as a profession—statistically suffer from one of the highest rates of substance abuse and depression. Current thinking suggests that a lawyer should—indeed, must—consciously choose and strive to try and maintain some degree of balance and quality of life in order to be able to better handle the day-to-day demands, pressures and stresses that normally accompany an active law practice. For these reasons, it is not hard to understand why some lawyers decide to leave the practice of law, in whole or in part, long before traditional retirement age—sometimes even during the very early stages of a legal career. Indeed, some of us are perhaps really meant to be poets, rather than lawyers or jurists.[57]

For the lawyer who decides/chooses to leave the practice of law "early" because of a choice to change lifestyle and/or career, the checklist and steps detailed within the previous section on retirement will be just as relevant. The advice here, however, would be that, unless your choice is clear and unwavering, you should strongly consider maintaining your "active" status for your law license, i.e., continuing to pay LSBA annual dues and LADB annual disciplinary assessments, as well as continuing to satisfy annual MCLE requirements. Just because you may no longer wish to be a lawyer and practice law does not mean that you cannot continue to have and maintain your law license. It may come in handy one day. You may decide that you want to do *pro bono* work. And/or you may find a new form of employment/occupation that would permit you to do non-traditional legal work but for which a law license might be necessary or, at least, helpful.

Alternatively, if you are convinced/certain that you no longer wish to be a lawyer, you may still wish to consider going on "inactive status"—at first—rather than formally surrendering/abandoning your law license altogether, as it will be much harder to "get back in" if you ever change your mind and wish to resume your legal career.

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[56] *"…I will not say with Lord Hale, that 'the law will admit of no rival, and nothing to go even with it;' but I will say, that it is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favours, but by a lavish homage…."* U.S. Supreme Court Justice Joseph Story (1811-1845), *A Discourse Pronounced upon the Inauguration of the Author, as Dane Professor of Law in Harvard University on the Twenty-fifth Day of August, 1829* (1829), p. 29.

[57] *"…Not all of us who drink are poets. Some of us drink because we're not poets…"* Fictional character Arthur Bach from the 1981 film *Arthur*.

Section 4. Discipline or Resignation in Lieu of Discipline

If you are reading this Section, it may be out of sheer curiosity. Or it may be much more serious, i.e., that it could perhaps directly apply to you. In either case, what has been detailed within the previous Sections would also be pertinent, useful and beneficial to a lawyer now faced with having to shut down a law practice, either temporarily (for instance, because of an Order of Suspension[58], Interim Suspension[59], Consent Discipline[60] or Transfer to Disability Inactive Status[61]) or more permanently (because of an Order of Disbarment[62] or Permanent Disbarment or Permanent Resignation in Lieu of Discipline[63]). Although it may not seem so to you if you are on the receiving end of lawyer discipline, the purpose of lawyer discipline is not primarily to punish the lawyer but to protect the public by maintaining appropriate standards of professional conduct and deterring other lawyers from engaging in violations of those standards.[64] In simplest terms, the most important thing a lawyer who is facing discipline must do—especially if that lawyer hopes to return to and resume the practice of law—is focus on protecting the public and, in particular, the lawyer's own clients, rather than focusing on anger, resentment, revenge, etc.

When the discipline to be imposed will be for any length of time, the lawyer must ensure that his/her clients (and others) will be protected during the lawyer's absence from the active practice of law. Under these circumstances, Section 26 of current Rule XIX of the Rules of the Supreme Court of Louisiana governs and imposes, at a bare minimum, what must be done:

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[58] Section 10(A)(2) of current Rule XIX of the Rules of the Supreme Court of Louisiana states: *"…(2) Suspension by the court for an appropriate fixed period of time not in excess of three years…"*

[59] See Sections 19.2 and 19.3 of current Rule XIX of the Rules of the Supreme Court of Louisiana.

[60] See Section 20 of current Rule XIX of the Rules of the Supreme Court of Louisiana.

[61] See Section 22 of current Rule XIX of the Rules of the Supreme Court of Louisiana.

[62] Section 10(A)(1) of current Rule XIX of the Rules of the Supreme Court of Louisiana states: *"…(1) Disbarment by the court. In any order or judgment of the court in which a lawyer is disbarred, the court retains the discretion to permanently disbar the lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law. [Amended effective August 1, 2001 , see Appendix E, Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment, Suggested by The Committee to Study Permanent Disbarment and Commentary of the Court to accompany Order dated July 19, 2001 amending Rule XIX]…"*

[63] See Section 20.1 of current Rule XIX of the Rules of the Supreme Court of Louisiana.

[64] *"…The purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain the appropriate standards of professional conduct, to preserve the integrity of the legal profession, and to deter other lawyers from engaging in violations of the standards of the profession…"* ***In re: Hackman***, 02-B-1692, p. 6 (LA. 2002); ***In re: Vaughan***, 00-1892, p. 4 (La. 10/27/00), 772 So. 2d 87, 89; ***In re: Lain***, 00-0148, p. 7 (La. 5/26/00), 760 So. 2d 1152, 1156; ***Louisiana State Bar Association v. Levy***, 400 So. 2d 1355, 1358 (La. 1981).

Section 26. Notice to Clients, Adverse Parties, and Other Counsel.

A. Recipients of Notice; Contents. Within thirty days after the date of the court order imposing discipline, transfer to disability inactive status, or permanent resignation, a respondent who permanently resigns in lieu of discipline, or a respondent who is disbarred, transferred to disability inactive status, placed on interim suspension, or suspended for more than six months shall notify or cause to be notified by registered or certified mail, return receipt requested,

(1) all clients being represented in pending matters;

(2) any co-counsel in pending matters; and

(3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order.

The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.
[Amended effective July 5, 2001]

B. Special Notice. The court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

C. Duty to Maintain Records. The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs A and B, and shall make those records available to the disciplinary counsel on request. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement or readmission. **[Amended effective August 15, 1999]**

D. Return of Client Property. The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

E. Effective Date of Order; Refund of Fees. Court orders imposing discipline or transfer to disability inactive status are effective in accordance with La. C.C.P. Art. 2167[65], unless otherwise ordered. Orders imposing discipline in accordance with Section 20, orders which impose an interim suspension, and permanent resignation orders are effective immediately, unless otherwise ordered by the court. The respondent shall refund within thirty days after entry of the order any part of any fees paid in advance that has not been earned. **[Amended effective July 5, 2001]**

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[65] *LA C.C.P. Article 2167 (as of 2017). Supreme court judgment rehearing; finality; stay. A. Within fourteen days of the transmission of the notice of judgment in the supreme court, a party may apply to the court for a rehearing. B. A judgment of the supreme court becomes final and definitive when the delay for application for rehearing has expired and no timely application therefor has been made. C. When an application for rehearing has been applied for timely, a judgment of the supreme court becomes final and definitive when the application is denied. The supreme court may stay the execution of the judgment pending a timely application for certiorari or an appeal to the United States Supreme Court. D. For the purposes of this Article, "transmission of the notice" means the sending of the notice via the United States Postal Service, electronic mail, or facsimile.*

F. Withdrawal from Representation. In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

G. New Representation Prohibited. Prior to the effective date of the order, if not immediate, the respondent shall not agree to undertake any new legal matters between service of the order and the effective date of the discipline.

H. Affidavit Filed with Court. Within thirty days after the effective date of the disbarment or suspension order, order of transfer to disability inactive status, or order of permanent resignation, the respondent shall file with this court an affidavit showing:

(1) Compliance with the provisions of the order and with these rules;

(2) All other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;

(3) Residence or other addresses where communications may thereafter be directed; and

(4) Service of a copy of the affidavit upon disciplinary counsel.

Part Two: Third-Party Shutdown of a Louisiana Law Practice

This Part of the Handbook is intended to guide those who may be faced with closing and shutting down a law practice when the lawyer/owner of the practice is unable and/or unwilling to take an active role in the closure and shutdown process and very likely has taken no steps to do any form of advance planning for that event. Many different circumstances may be involved and serve as the catalyst for this situation. In all likelihood, one (or more) of "the Seven D's" [66] (referred to earlier in Part One of this Handbook, covering "lawyer-involved shutdown") will be the reason for this type of shutdown and the lawyer who will then be appointed/tasked with managing the shutdown may very often even be a complete stranger to the "Lawyer-in-Question".

Nevertheless, any advance planning for such situations that may have already been done by the now-unable/unwilling "Lawyer-in Question" will be of immense help and comfort to those who may now be faced with the prospect of delving into what may be an entirely foreign and even-less-understood world of clients, confidential information, trust accounting, client billing and collections, impending court dates, continuances, conflicts of interest, file surrender, file retention, courts, bar associations and the like. Like peeling back the layers of a large, ripening, soon-to-be-rotting onion, third-parties who are suddenly, unexpectedly left with the task of figuring out the many different things that must be done (and, sometimes, the many different "messes" that must also be waded through and/or cleaned up) in order to shut down the law practice of a friend, family member or loved one are equally likely to face moments of uncontrollable tears and great personal discomfort as they continue to work on this task. Not only will the prior advance planning of the lawyer/owner of this law practice have ethically served to protect the interests of the lawyer's clients to an extent reasonably practicable but that same planning will make the job facing the now-well-meaning third party(ies) more manageable, ultimately simpler and conceivably less emotionally painful.

Unfortunately, it is a sad, professionally-shameful and embarrassing fact that many lawyers in Louisiana—despite our oft-self-proclaimed high ethical standards, professionalism and current annual requirement for mandatory continuing legal education—still do not understand and undertake to fulfill the obligation to plan in advance for the possibility of one (or more) of "the Seven D's" occurring suddenly, unexpectedly in their own lives.[67] And it is for the poor, unfortunate souls who are left to bear and carry the burden of shutting down the law practice of such a lawyer that this Part of the Handbook is most intended, as an aid offering some basic but meaningful guidance. Ideally—and almost certainly—another lawyer should be involved or engaged by any non-lawyers who might be attempting to assist with the shutdown and closure of such a law practice. While a well-meaning non-lawyer who is moderately intelligent, conscientious, determined and capable could conceivably undertake the task of shutting down a law practice, the practical skills, familiarity with the court system and active/eligible law license of a competent lawyer will almost certainly be necessary to complete the process, especially with respect to administering the client trust

[66] Namely: **D**eath; **D**efeat; **D**isability; **D**isappearance; **D**isaster; **D**iscipline; and **D**isease.

[67] One is reminded of the old English proverb, first recorded in 1175 in *Old English Homilies*: "*…Hwa is thet mei thet hors wettrien the him self nule drinken…*" ["…Who can give water to the horse that will not drink of its own accord?…"].

account(s) of the "Lawyer-in-Question" and signing/filing/appearing for/arguing any necessary court pleadings.

An even sadder professional shortcoming is that the issues and information contained herein are not likely commonly known or understood by even the most well-meaning of lawyers.[68] Saying that a non-lawyer should not/cannot fully handle this task and that a licensed lawyer should be involved still only gets us so far, since there are then, realistically, probably only a very few lawyers in Louisiana who have ever actually been called upon as a volunteer (or even as a paid counsel)—and, as such, know how—to shut down some other lawyer's law practice. For this reason, it is hoped that this Handbook might serve as the foundation or primer for more frequent, wider-spread discussions (and continuing education) among lawyers and judges regarding these matters, particularly the need for nearly every privately-practicing lawyer to consider and prepare for one or more of the "Seven D's".

[68] As of the writing of this edition of this Handbook, the LSBA and I are currently working on the idea/plan/mechanics of enlisting the aid of qualified volunteer lawyers to serve on "Receivership Team Panels"—effectively, a group of volunteer lawyers who have been specially trained by the LSBA and are available for court-appointment to step in quickly, as needed, to be appointed as "Receiver Lawyer(s)" to protect the interests of the public, the clients and the "Lawyer-in-Question," while shutting down that lawyer's law practice in the event of the lawyer's death, disability, impairment, incapacity, serious discipline, serious victimization by disaster or disappearance. This will likely require changes to current Court rules (e.g., Rule XIX of the Rules of the Supreme Court of Louisiana and/or the Louisiana Rules of Professional Conduct) and maybe even special legislation, as well as the endorsement and support of the Supreme Court of Louisiana, given that Court's exclusive authority over the regulation of the practice of law in Louisiana. Successful implementation will, of course, also require education and guidance for both lawyers and judges. It is hoped and intended that this edition of this Handbook [and any subsequent editions/supplements] will help to serve and aid in—at least, partially—that purpose.

Section 1. Appointment Under §27 of Rule XIX

The first step in tackling the task/problem of having to shut down another lawyer's law practice—very likely where the "Lawyer-in-Question" is not capable of offering (or willing to offer) any assistance with the shutdown—would be to seek and obtain an appropriate court order legally appointing the would-be "Receiver Lawyer" to serve/function in that capacity for the purpose of inventorying and administering the law practice of the deceased/missing/disabled/impaired/disciplined "Lawyer-in-Question" in order to protect the public, as well as the interests of the clients and of the "Lawyer-in-Question". Given the fundamental precepts that: 1) client matters are considered strictly confidential;[69] and 2) it is critically important to safeguard the property[70] of clients and third persons that is being held by a lawyer in connection with a representation, there are a variety of risks and issues raised with the introduction of an otherwise-random/unconnected second lawyer into a law practice, especially if the would-be "Receiver Lawyer" also has his/her own separate/independent, active, on-going private law practice (and which is likely made even more potentially-problematic in smaller communities with very few resident licensed lawyers). For this reason, any lawyer who would choose (or be chosen) to serve as a "Receiver Lawyer" for another lawyer's law practice very likely does not deserve to have to deal also with unanticipated/unwanted conflicts of interest, much less claims of professional liability and/or legal malpractice. As such, it is highly recommended that the would-be "Receiver Lawyer" seek and obtain an appropriate court order detailing, but carefully limiting, the scope of that lawyer's task and exposure to these complications/headaches.

Current Rule XIX of the Rules of the Supreme Court of Louisiana—otherwise known as the "disciplinary rule" covering all things pertinent to Louisiana's lawyer discipline process—includes, somewhat hidden and buried within its long and varied content, Section 27, entitled "*Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.*"[71] While this Rule appears, on first reading, to be intended primarily to aid in the disciplinary process with regard to a "respondent" lawyer who has suffered from one (or more) of the enumerated circumstances [and, admittedly, it is…], it can (and, for the present, it should) be argued that there is no other Rule currently in existence in Louisiana to deal with these same situations for lawyers who are really/actually not "respondent[s]" in any disciplinary matter(s) but who have, nevertheless, had the similar misfortune of dying or becoming disabled/impaired/incapacitated or, for whatever reason, simply disappearing. For that reason, it is strongly recommended that the would-be "Receiver Lawyer" (and/or the appointing court) consider citing §27 of Rule XIX when seeking the appointment to inventory/administer/shut down the law practice of the "Lawyer-in-Question". While doing so may not fully diminish or dispense with the risks/issues related to confidentiality, conflicts of interest, professional

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[69] Current Rule 1.6(a) of the Louisiana Rules of Professional Conduct states that "*…A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)…*"

[70] Current Rule 1.15(a) of the Louisiana Rules of Professional Conduct obligates a lawyer to "*…hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property…*" and further emphasizes that "*…[O]ther property shall be identified as such and appropriately safeguarded…*"

[71] See APPENDIX O Rules of the Supreme Court of Louisiana: Rule XIX: Section 27. Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.

liability, etc., at least the would-be "Receiver Lawyer" has the express legal authority of the appointing court, pursuant to a Supreme Court rule, to delve into the confidential matters of another lawyer's clients and to do whatever is reasonably necessary to shut down that lawyer's law practice while protecting the public, as well as the interests of the clients and of the "Lawyer-in-Question".

To be clear, the would-be "Receiver Lawyer" (just like the "Back-Up Lawyer" discussed earlier in Part One, Section 1.A. of this Handbook) should normally not be appointed simply to "take over"/"succeed" and fully "assume" the law practice and clients—and pre-existing liabilities, disciplinary issues, etc.—of the "Lawyer-in-Question". The "Receiver Lawyer" should be appointed—and the appointing court order should be clear/specific to note that the lawyer is being appointed as counsel—to "inventory the files of the 'Lawyer-in-Question'" and "to take such action as seems reasonably indicated to protect the public, as well as the interests of the clients and of the 'Lawyer-in-Question'". The would-be "Receiver Lawyer" should not normally become and should not normally be appointed to become the new lawyer for the clients of the "Lawyer-in-Question". In fact, it should be one of the primary tasks of the "Receiver Lawyer", once appointed, to notify and advise/instruct the clients of the "Lawyer-in-Question" that they should seek new, competent counsel—i.e., someone other than the "Receiver Lawyer"—as soon as possible.

A. Situations Involving Serious Lawyer Discipline

If the "Lawyer-in-Question" is the current subject/recipient of the imposition of serious lawyer discipline[72]—i.e., interim suspension,[73] a suspension of six (6) months or longer with no period of deferral,[74] disbarment,[75] permanent disbarment[76] or permanent resignation in lieu of discipline,[77] the Office of Disciplinary Counsel ("ODC") for the Louisiana Attorney Disciplinary Board is almost certainly already fully involved with and cognizant of the circumstances surrounding the "Lawyer-in-Question" (technically referred to as a "respondent" within the lawyer disciplinary process), as well as the need to protect the interests of that lawyer's clients while the lawyer's law office is shut down and closed [either temporarily for the duration of the period of imposed discipline or permanently, as the circumstances may require]. In that instance, there is already a specific process and list of things that must be done by a lawyer faced with those circumstances—namely, §26 of Rule XIX of the current Rules of the Supreme Court of Louisiana.[78]

The respondent-lawyer is obligated, under Rule XIX, to follow and comply with §26. However, not all respondent-lawyers are cooperative or diligent in fulfilling their §26 duties. As a consequence, the ODC may very likely invoke §27 of Rule XIX and seek a court Order from the presiding district judge in the parish where the respondent-lawyer practices/practiced/maintained a law office appointing a "Receiver Lawyer" to "inventory the files" of the respondent-lawyer and "to take such action as seems indicated to protect the interests of the respondent and his or her clients". It is under those circumstances that you may one day receive an otherwise unanticipated (potentially unwanted) court appointment to shutdown and close the law office of an otherwise previously-unfamiliar respondent-lawyer who has not taken the appropriate steps to fulfill what is otherwise required of that lawyer by §26 of Rule XIX.

If you are appointed under §27 of Rule XIX based upon its invocation by the ODC, it is highly probable/almost certain that the Order of appointment, as well as any contemporaneous correspondence from the ODC and/or the appointing court, will direct you to advise the Supreme Court of Louisiana, with a copy to the ODC, of the progress of your inventory and actions taken pursuant to the appointment. That can simply take the form of periodic letters/reports sent to the Supreme Court of Louisiana and to the ODC. Even in the unlikely event that you are not instructed to do this, it is highly recommended that you do so.

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[72] While technically not really a form of "serious discipline", a lawyer who has been placed on "disability inactive status" under §22 of Rule XIX of the current Rules of the Supreme Court of Louisiana has also very likely become the subject of such proceedings.

[73] See §19.2 of Rule XIX of the current Rules of the Supreme Court of Louisiana.

[74] See §10.A.(2) of Rule XIX of the current Rules of the Supreme Court of Louisiana.

[75] See §10.A.(1) of Rule XIX of the current Rules of the Supreme Court of Louisiana.

[76] See APPENDIX E of Rule XIX of the current Rules of the Supreme Court of Louisiana.

[77] See §20.1 of Rule XIX of the current Rules of the Supreme Court of Louisiana.

[78] See APPENDIX N Rules of the Supreme Court of Louisiana: Rule XIX: Section 26. Notice to Clients, Adverse Parties, and Other Counsel.

It is also highly recommended that, under these circumstances, you direct any relevant questions to the ODC for further guidance and instruction.

It should also be noted that an appointment pursuant to a request/invocation of §27 of Rule XIX by ODC will also very likely provide an opportunity for reimbursement of any actual out-of-pocket expenses incurred by you, as "Receiver Lawyer", in carrying out your duties. Unfortunately, it is realistically unlikely that the ODC will be able to offer payment of any attorney's fees to the "Receiver Lawyer" for the time/efforts expended by that lawyer in fulfilling the tasks/duties imposed by the appointment. But this would certainly amount to *pro bono* work and "giving back" to the profession.

B. Mechanics of Requesting Appointment

While §27 of Rule XIX is being cited and recommended as the basis for an appointment of a "Receiver Lawyer", the language of the Rule is conspicuously silent as to how or exactly what procedural device should be employed to seek and obtain the appointment of the "Receiver Lawyer". The pertinent language of the Rule states "*...**the presiding judge** in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, **shall appoint a lawyer or lawyers**...*" [***emphasis*** added]. In practical terms, it seems highly unlikely—except, perhaps, in the most tightly-knit, likely smaller legal communities or in the event of some highly-publicized tragedy or occurrence—that a presiding judge in a judicial district will even know first-hand in every case that a lawyer in that judicial district has suddenly died or become disabled/impaired/incapacitated or disappeared. This would perhaps be especially true for a lawyer who has an office-based, almost-exclusively-transactional practice and who never sets foot in the local courthouse other than to visit the mortgage and conveyance office(s) for the parish. So, to expect the presiding judge to unilaterally initiate the appointment process in every—or even most—instance(s) appears fairly naïve and unrealistic.

More than likely, then, the appointment will need to be initiated by a request made/sent to the presiding judge in the relevant judicial district. Until this process has matured and become commonly understood by members of the Bar and judiciary, it is submitted that a uniform procedural device may not yet be available, i.e., the process of requesting the appointment under §27 of Rule XIX may vary in its mechanical/procedural details from Louisiana judicial district to judicial district, judge to judge, clerk of court to clerk of court, etc. The recommendation here is to start simply and efficiently with a letter from the would-be "Receiver Lawyer" (or well-meaning family member who has yet to find/secure a willing/eligible/competent candidate for "Receiver Lawyer") addressed to the presiding judge of the pertinent judicial district,[79] notifying the judge of the situation that has befallen the "Lawyer-in-Question", providing "*...proper proof of the fact[s]...*" now being alleged about the "Lawyer-in-Question", citing §27 of Rule XIX and requesting respectfully that the judge appoint a lawyer (the would-be "Receiver Lawyer" if there is one) to carry out the tasks/duties enumerated within §27 of Rule XIX with regard to the "Lawyer-in-Question". That letter, for the ease and convenience of the judge in making the appointment sought, could also include a ready-made, blank proposed court Order for the requested appointment.[80] In support of starting with/using the method recommended above, during the drafting of this Handbook, an inquiry on this topic was sent to the ODC and resulted in a helpful response from its Chief Disciplinary Counsel to the effect that this "simple letter request" method to invoke/request §27 appointments is what has been and is currently utilized by (and works successfully for) ODC.[81]

In the event that a particular judge/venue does not wish to make the appointment based on a simple letter request (as suggested above), the judge (or judge's law clerk) should be asked, respectfully, for guidance

[79] See APPENDIX Q SAMPLE LETTER TO PRESIDING JUDGE SEEKING/REQUESTING RULE XIX, §27 APPOINTMENT OF "RECEIVER LAWYER".

[80] See APPENDIX R SAMPLE PROPOSED COURT ORDER FOR RULE XIX, §27 APPOINTMENT OF "RECEIVER LAWYER".

[81] We/I gratefully acknowledge and appreciate the (always) kind assistance, support and useful materials provided by ODC's long-time Chief Disciplinary Counsel, Charles B. Plattsmier.

as to the specifics/details about what the judge would prefer/want to see/receive in lieu of a simple letter request, e.g., some sort of *ex parte* motion or petition or something else (?). Once again, until some more-uniform, well-understood process for this situation might be further developed and promulgated, this task will be something of less than an "exact science". Those of you who do/must become "pioneers" in this area by virtue of an appointment as a "Receiver Lawyer" pursuant to §27 of Rule XIX are requested and strongly encouraged to kindly please forward to the LSBA copies of your pertinent forms, as developed/tried/used successfully, c/o Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, LA 70130, RLemmler@LSBA.org, voice: (504) 619-0144; fax: (504) 598-6753.

Section 2. Checklist for Closure/Shutdown of Law Practice by a Third-Party

Once the "Receiver Lawyer" has been properly appointed and has a certified copy of the appointing Order in-hand, the "Receiver Lawyer" will need to get to work. The following is a non-exclusive but basic list of the things that will need to be done/addressed from that point forward:

1) Gain physical access to and enter the law office(s) of the "Lawyer-in-Question" – this may require some degree of creativity/finesse/diplomacy, depending upon the circumstances, including, but not limited to, finding office keys, alarm codes, computer passwords, etc., and/or contacting the spouse (or former spouse(s)), family/next-of-kin, office staff (if any), close friends, neighbors, landlord, etc., of the "Lawyer-in-Question" for assistance with this search.

2) Search for/locate/use any "Law Office Procedures Manual" that may have been previously prepared by the "Lawyer-in-Question".

3) Take possession and control of all property comprising "Lawyer-in-Question's" law office(s), including client files and records both in the office(s) and any located elsewhere (e.g., at the home of the "Lawyer-in-Question" or at an off-site storage facility [tangible/physical location and/or in "the Cloud"].

4) Retrieve, gather and open mail for the "Lawyer-in-Question"; and then sort and process it.

5) Examine client files and records to obtain information about any pending matters or deadlines that may require attention—prioritizing matters/files according to urgency and time constraints (generally, "active" files versus "inactive" files versus "closed" files).

6) Communicate in writing, first, with all clients for whom you have located "active" files, advising them that, due to the [death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance] of the "Lawyer-in-Question", the "Lawyer-in-Question" can no longer continue with his/her law practice and can no longer represent them as their lawyer. As a consequence—in order to protect their rights and interests—they will now need to retrieve their file(s) from you and locate and retain a new lawyer as quickly as possible.

   The clients should be further advised that the local district court has now appointed you as "Receiver Lawyer" to help with the shutdown and closure of the law office of the "Lawyer-in-Question" (provide/enclose a copy of the appointing court's Order) but that the appointment is not designed or intended for you to become their new lawyer or to take over full responsibility for their case(s)—i.e., you are simply there temporarily to shutdown and close the law office of the "Lawyer-in-Question", which includes surrendering/delivering client files and property, as expeditiously as possible, to all clients of the "Lawyer-in-Question" so that they can seek and retain new lawyers and proceed with their respective legal matters.

   Your written communication should inform the client about time limitations and time frames important to the client's case. The written communication should explain how and where the client can obtain the client's file and should give a time deadline for doing this. (See APPENDIX G SAMPLE LETTER ADVISING THAT PLANNING LAWYER IS UNABLE TO CONTINUE

WITH LAW PRACTICE (Sent by "Back-Up Lawyer" or other 3rd Party/"Receiver Lawyer")[82]). If you are comfortable/reasonably confident in doing so, consider referring the client to another lawyer (and/or to the local bar association's lawyer referral service for referrals to another lawyer [see https://www.lsba.org/Members/BarAssociations.aspx for contact information for local bar associations in Louisiana]) who may be able to handle the client's matter(s).

7) For cases that have pending, almost immediate court dates, depositions, or hearings, don't just rely on the letter sent/to be sent as per Item #6 above—contact the client by telephone and/or and discuss with the client in-person how to proceed. Where appropriate—especially if client contact is unsuccessful—prepare/file/request extensions, continuances, and/or new hearing dates, with appropriate notice to opposing counsel and/or self-represented adverse parties, witnesses, etc. Send written confirmations of these extensions, continuances, and new dates to opposing counsel/self-represented adverse parties, witnesses, etc., and to the client(s).

8) In cases where the client will be engaging a new lawyer, coordinate drafting and filing a Motion to Withdraw/Substitute Counsel with the new lawyer. In any such motions, you will be appearing in the place of the withdrawing counsel of record, i.e., as "Court-Appointed Receiver Lawyer for ["Lawyer-in-Question"]", and should attach/include a copy of the appointing court Order.

9) For all other "active" files that are not urgent and/or which have no pending court dates, etc., check to verify that all cases have either a Motion and Order allowing the "Lawyer-in-Question" to withdraw as attorney of record or a Motion and Order to Withdraw and Substitute Counsel.

10) Make copies of each "active" client file for retention purposes under Rule 1.15(a) and for your own benefit/protection.[83] **Surrender the original file to the client**.[84] Each client should either: 1) pick up the client's file(s), signing a receipt acknowledging the lawyer's surrender of the original file

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[82] While this Sample Letter was prepared and captioned, initially, to aid a "Back-Up Lawyer" who is now proceeding/operating under the terms of a "Back-Up Plan" that was designed and intended to be triggered/activated in the event of the death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance of a "Planning Lawyer", the same basic elements of the letter can/should be adapted for use by a "Receiver Lawyer" where any/all references to the "Planning Lawyer" ought to be replaced with references to the "Lawyer-in-Question" whose law practice the "Receiver Lawyer" has been appointed to shut down and close.

[83] One should strongly consider the benefits/efficiency/speed/cost-effectiveness of electronically scanning—rather than photocopying—client files for long-term retention and storage. Rather than incurring potentially-significant copying and storage costs for numerous physical paper files, one can very easily/inexpensively scan all client file materials into digital "PDF" format. Digital copies of scanned client files can then be kept, stored and duplicated on a relatively-inexpensive, solid-state, portable computer hard drive—which is extremely portable and does not take up any more space than a small hard-cover book. Prudence would suggest buying and using at least two (2) portable hard drives so that one has a "back-up"/extra copy of all of the scanned files. Then, too, there is also the option of also storing electronic copies of client files—in addition to using the solid-state, portable hard drive(s)—in "the Cloud", i.e., an off-site, Internet-based, monthly-fee-based storage plan. While not required, this "Cloud" storage option, in addition to using the portable hard drive(s), is a recommended "best practice"/"belt-and-suspenders" approach.

[84] See LSBA Public Ethics Advisory Opinion 05-LSBA-RPCC-003 PUBLIC Opinion (4/4/2005), *Surrender of Client File Upon Termination of Representation*.

directly to the client (See APPENDIX K SAMPLE CLIENT'S ACKNOWLEDGMENT OF RECEIPT OF LEGAL FILE(S)); or 2) sign a written authorization for you to release and send the file(s) directly to the client himself/herself (See APPENDIX J SAMPLE CLIENT'S REQUEST FOR DIRECT SURRENDER OF LEGAL FILE(S)); or 3) if preferred/requested by the client, sign a written authorization for you to release and send the file(s) directly to the client's new lawyer(s) (See APPENDIX I SAMPLE CLIENT AUTHORIZATION FOR TRANSFER OF LEGAL FILE(S) TO NEW LAWYER).

11) Remember that **any/all relevant original documents**—even if not normally stored/kept by you or the "Lawyer-in-Question" within the file itself (e.g., wills/notarial testaments/etc., stock certificates, x-rays/medical records, etc., perhaps stored in an office safe, vault or safe deposit box) **should also be returned to the client or to the client's new lawyer**, as appropriate, with appropriate signed, written acknowledgements for same, and copies should be kept with/in your own copy of the file.

12) For those client files that are still not retrieved by the client or the client's new lawyer, each client should be informed in writing where/how and for how long the client's file(s) will be stored and who should be contacted in order to retrieve the client's file(s). If the "Lawyer-in-Question" had and followed a reasonable file retention/destruction policy[85] which is already in place (and clients have all been previously informed of and acknowledged same in writing), you may appropriately destroy any closed client files in keeping with that file retention/destruction policy.

13) If the "Lawyer-in-Question" did not have such a file retention/destruction policy, you should now seek and obtain signed, written permission from the client for you to destroy the client's file(s) at a point five years after the matter has been concluded or the representation has been terminated. Some special types of client files may still need to be retained for periods longer than five (5) years due to relevant prescriptive periods, etc. For example, files for matters involving immovable property rights and/or matters involving the rights/interests of minor children, convicted/incarcerated criminal defense clients, etc., may need to be retained by the lawyer for periods greater than just the basic five (5) years following the conclusion of the matter or termination of the representation. If a closed client file is to be stored by yet another lawyer (who will, perhaps, take over that function), you should seek and obtain the client's permission in writing to allow that other lawyer to store the file, as well as provide the client with that other lawyer's name, address, telephone number and email address—remember the information inside of that file, even a closed file, is still considered confidential and the property of the client.

22) Consider publishing in the classified advertisements section of the local newspaper, and within the ***Louisiana Bar Journal***, the name, address, telephone number and email address of the person who will be entrusted with the remainder of the closed files you are retaining for the "Lawyer-in-Question", if you will not continue (or be able to continue) to retain them yourself for the appropriate retention period(s) as needed. Again, remember that even closed client files contain client confidential information, so any custodian in your stead should be chosen carefully and should understand your/their continuing duty to maintain and protect client confidentiality with respect to the files in question.

[85] See LSBA Public Ethics Advisory Opinion 06-LSBA-RPCC-008 PUBLIC Opinion (1/4/2006), *Client File Retention*.

14) If, after all of the foregoing steps, there are still client files remaining that have not been successfully retrieved/delivered/surrendered or appropriately destroyed, the "Receiver Lawyer" may have no choice but to continue to retain and protect those remaining client files (perhaps at the law office/file storage facility of the "Receiver Lawyer")—barring seeking and obtaining express permission/authority from the appointing court to allow for the appropriate destruction/disposal of the remaining client files or some other reasonable alternative for their disposition.

15) If the law office telephone number has been or will be disconnected before you have substantially completed the shutdown and closure of the law office, consider contacting the telephone service provider and making arrangements for a limited-term "call forwarding message", providing another contact telephone number (e.g., your own office or cell phone number [perhaps even better, a short-term, dedicated "disposable cell phone" and phone number just for this purpose] or home telephone number) if and when the old law office telephone number might be called. Alternatively, consider arranging for limited-term "call forwarding", having any calls to the old law office number automatically routed to/"call forwarded" invisibly to either your home telephone, cell phone (or "disposable cell phone") or even to a lawyer who may be assisting with the shutdown of this law office. This will assist the clients if they attempt to contact the "Lawyer-in-Question" after you have shut down the lawyer's office.

16) Contact the bank(s) or other financial institutions where the "Lawyer-in-Question" maintained any/all client trust account(s) [both IOLTA and any non-IOLTA client trust account(s)], law office operating account(s), escrow account(s), payroll account(s), safe deposit box(es), etc., and determine whether the bank(s) will simply honor the terms/instructions of the court Order appointing you as "Receiver Lawyer" with respect to granting you full access/authority/signature power over these accounts/safety deposit box(es), OR whether the bank(s) will need/require something additional for that to happen.

17) Disburse funds held in the client trust and/or escrow account(s) to the appropriate clients/legally-entitled persons, along with a final accounting. With client consent, confirmed in writing, you can also deliver the funds directly to a new lawyer designated by the client. With respect to any funds subject to dispute, you will need either to try and resolve these disputes—either informally or perhaps trying to use the LSBA Fee Dispute Resolution Program—or, where appropriate, invoke a concursus proceeding to allow a court to determine the rightful owner(s) and allocation of the funds in question.

18) If there are any "unidentified funds" remaining in the client trust account(s) of the "Lawyer-in-Question", Rule 1.15(h) of the current Louisiana Rules of Professional Conduct requires that they "*…must [be] remit[ted]…to the Louisiana Bar Foundation…*" Rule 1.15(g)(7) states "*…'Unidentified Funds' are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person or law firm…*" These are not funds in an IOLTA client trust account that can be identified as belonging to—but are simply "unclaimed" by—a client or third party. Unlike "unidentified funds", funds that clearly belong to a client or third-party and that are just "unclaimed" (for example, because the client is missing or the lawyer can no longer find/locate the client) must be dealt with and handled differently. As a last resort, "unclaimed funds" may be delivered to/deposited with the Unclaimed

Property Division for the Department of the Treasury for the State of Louisiana.

19) In the event that you are successful in disbursing absolutely all funds from a client trust or escrow account, it should also be noted that any changes or additions to a client trust account(s) are required to be reported to both the Louisiana Bar Foundation (www.raisingthebar.org) and the Louisiana Attorney Disciplinary Board (www.LADB.org) within thirty (30) days of any such change or addition[86]—that would include closure of the client trust account(s).

20) Call the LSBA Membership Department at (504) 566-1600/toll-free 1-800-421-5722 and update the membership records with respect to the "Lawyer-in-Question", ideally within thirty (30) days of the change.[87]

21) Contact Gilsbar (https://www.gilsbarpro.com/Home;1-800-906-9654) or any other professional liability insurance carrier(s) about any malpractice/professional liability coverage previously maintained by the "Lawyer-in-Question". If not done already by the "Lawyer-in-Question"—and if the funds are available from the assets of the law office—consider whether it may be prudent/necessary to purchase an "Extended Reporting Endorsement" ("ERE") for the existing malpractice policy for the "Lawyer-in-Question". An "ERE" is commonly referred to as a "tail policy" or "tail coverage". As the name implies, an "ERE" extends the period during which a lawyer may report a claim to his/her malpractice carrier, including claims that only surface after the lawyer has already closed down his/her law practice. Discuss with the carrier the appropriate/available period(s) of time for an "ERE". The cost for an "ERE" is typically a one-time premium.

22) If the "Lawyer-in-Question" did not own his/her law office building/space, properly terminate the law office lease in accordance with the terms of that lease. You will need to notify the landlord of the shutdown and closure of the law office. You may need to try and negotiate early termination terms.

23) If the "Lawyer-in-Question" actually owns the law office building or office space, you will need to consider and decide whether to sell it or whether the surviving spouse, heirs, successors, legatees, assigns, etc., might wish to become a landlord, perhaps even for another lawyer looking for office space. This second option could also potentially serve as a means/avenue for transitioning some portion(s)—or even a great portion—of the law practice over to another lawyer who will become a new tenant and occupy the former office space of the "Lawyer-in-Question". That lawyer-tenant may even have an interest in purchasing the entire law practice or an area of the law practice,[88]

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[86] Under Section 8(C) of current Rule XIX of the Rules of the Supreme Court of Louisiana, *"…Each lawyer shall file with the Louisiana Bar Foundation and Louisiana Attorney Disciplinary Board any change or addition to trust or escrow account information within thirty (30) days of the change or addition…"*

[87] Under Section 8(C) of current Rule XIX of the Rules of the Supreme Court of Louisiana, *"…Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical or office email address within thirty days of the change…"*

[88] See APPENDIX M Current (2017) Louisiana Rules of Professional Conduct: Rule 1.17. Sale of a Law Practice (effective 07/01/2016).

and/or leasing some of the equipment, furniture and fixtures, as well as possibly taking over representation of some of the clients. This may not be possible—or reasonable—in all cases but it is certainly something to consider and explore when faced with shutting down and closing a law office.

24) Similarly, arrange for termination of any office equipment leases (e.g., copier(s), printer(s) furniture, etc.), subscriptions for legal publications, computer software/hardware, and for the removal of the leased equipment as per the terms/instructions of the equipment lease(s)/lessor(s).

25) It is important to remember that most printers, scanners, copiers, etc., now have built-in memory and/or may interface in some way with the law office computer(s)—which means they may very likely have some confidential client data also stored within that built-in memory. Be sure to reset/"wipe" any confidential client data from the built-in memory of these pieces of office equipment before returning them to the lessor(s), or if the "Lawyer-in-Question" owns the equipment, before selling, leasing or donating the equipment to someone else.

26) Accounting records. Retain all accounting records for potential IRS review, as they may be necessary to prove income, expenses, deductions, etc., especially in the event of an audit. If possible and reasonable under the circumstances, consult with and/or engage the services of a CPA or accounting/tax professional for current/up-to-date advice concerning appropriate tax-related retention period(s).[89] Note also that Rule 1.15(a) of the current Louisiana Rules of Professional Conduct, in pertinent part, states "*…Complete records of [client trust accounts] and other [client] property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation…*" So, at a minimum, the Louisiana Rules of Professional Conduct (as of November 2017) would require you to maintain virtually all of the same accounting records for your client trust account(s) for at least five (5) years after termination of representation or, in this case, at least five (5) years after your actual retirement from the practice of law (assuming you have formally terminated representation at that point).

The foregoing list, of course, contains only basic/generic guidelines. Each individual law practice will be different and have special or unique items/issues that will also need to be addressed during the shutdown process.

For additional (but very similar) tips/guidelines while shutting down a law practice, one should also consider reviewing the "*Retirement From Law Practice Checklist*" contained in Part One, Section 2.A of this Handbook.

[89] Currently, seven (7) years is what is normally recommended as the retention period for records for the IRS. See also https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/How-long-should-I-keep-records. But check with a qualified, competent tax professional at the time of your actual retirement to confirm what would be appropriate for you at that time.

Section 3. What's On the Horizon Re: Closure/Shutdown of Law Practice by a Third-Party

Unavoidably, it appears that the current population of aging "baby boomers" is growing and will continue to swell to become a truly significant percentage of total licensed LSBA members for at least the next several decades (i.e., until we are all dead and gone…). Although the issue of shutting down and closing a law office for a lawyer who has not planned or made any advance arrangements for doing so in the event of the lawyer's death, disability, impairment, incapacity, serious discipline, serious victimization by disaster or disappearance has not appeared to have been one of major importance or concern before now—insofar as this is really not a commonly-known or fully-understood process when it comes to Louisiana-licensed lawyers—the aging "boomer" population is highly likely to make it one for a while to come. For that reason especially, it is incumbent upon us, as a Bar Association, to prepare and mobilize for handling the affairs—and, most importantly, protecting the public and the interests of the clients—of our professional brethren who have not prepared for such an event.

As of the writing of this edition of this Handbook, the LSBA and I are currently working on the idea/plan/mechanics of enlisting the aid of qualified volunteer lawyers to serve on "Receivership Team Panels"—effectively, a group of volunteer lawyers who have been specially trained by the LSBA and are available for court-appointment to step in quickly, as needed, to be appointed as "Receiver Lawyer(s)" to protect the interests of the public, the clients and the "Lawyer-in-Question," while shutting down that lawyer's law practice in the event of the lawyer's death, disability, impairment, incapacity, serious discipline, serious victimization by disaster or disappearance. This will likely require changes to current Court rules (e.g., Rule XIX of the Rules of the Supreme Court of Louisiana and/or the Louisiana Rules of Professional Conduct) and maybe even special legislation, as well as the endorsement and support of the Supreme Court of Louisiana, given that Court's exclusive authority over the regulation of the practice of law in Louisiana. Successful implementation will, of course, also require education and guidance for both lawyers and judges. It is hoped and intended that this edition of this Handbook [and any subsequent editions/supplements] will help to serve and aid in—at least, partially—that purpose.

APPENDIX A

SAMPLE

AGREEMENT TO CLOSE LAW PRACTICE

Between: _____, "Planning Lawyer"

And: _____, "Back-Up Lawyer"

1. Purpose

The purpose of this Agreement is to protect the rights and legal interests of the clients of Planning Lawyer in the event that Planning Lawyer is unable to continue with Planning Lawyer's law practice due to death, disability, impairment, incapacity, serious professional discipline, disaster or disappearance.

2. Parties

The term "Planning Lawyer" refers to the lawyer designated as such in the caption above, or the Planning Lawyer's representatives, heirs, legatees or assigns. The term "Back-Up Lawyer" refers to the lawyer designated as such in the caption above, or an alternate lawyer specifically named later within this Agreement. The term "Authorized Signer" refers to the lawyer designated to sign on Planning Lawyer's law office bank accounts and any/all law-office-related safety deposit box(es), including, but not limited to, all law office operating account(s), payroll account(s) and client trust account(s)—both IOLTA and non-IOLTA—and to provide an accounting for the funds in those accounts.

3. Establishing Death, Disability, Impairment, Incapacity, Serious Professional Discipline, Disaster or Disappearance

In determining whether Planning Lawyer is dead, disabled, impaired, incapacitated, has been seriously professionally disciplined, has seriously fallen victim to disaster or disappeared, Back-Up Lawyer may act upon such evidence as Back-Up Lawyer shall deem reasonably reliable, including, but not limited to, communications with family members or representatives of Planning Lawyer, law enforcement authorities, lawyer disciplinary authorities and/or a written opinion of one or more competent, duly-licensed physicians or medical professionals. Similar evidence or medical opinions may be relied upon by Back-Up Lawyer to establish that Planning Lawyer's disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance has ended. Back-Up Lawyer is hereby specifically relieved and released from any responsibility and/or liability for acting reasonably in good faith upon such evidence and/or medical opinion(s) in carrying out the provisions of this Agreement.

4. Consent to Close Law Practice

Planning Lawyer hereby gives consent to Back-Up Lawyer to take all actions reasonably necessary to shut down and close the law practice of Planning Lawyer in the event that: 1) Planning Lawyer is unable or

unwilling to continue in the private practice of law; and 2) Planning Lawyer is unable or unwilling to close Planning Lawyer's own practice due to death, disability, impairment, incapacity, serious professional discipline, disaster or disappearance.

Planning Lawyer hereby appoints Back-Up Lawyer as his/her "Attorney-in-Fact", with full power to do and accomplish all the actions contemplated by this Agreement as fully and as completely as Planning Lawyer could do personally if Planning Lawyer were able to do so. It is the specific intent of Planning Lawyer that this appointment of Back-Up Lawyer as his/her "Attorney-in-Fact" shall be limited to and only become effective upon the death, disability, impairment, incapacity, professional discipline, serious victimization by disaster or disappearance of Planning Lawyer. The appointment of Back-Up Lawyer shall not be invalidated because of Planning Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance, but, instead, the appointment shall fully survive such death, disability, impairment, incapacity, serious professional discipline, disaster or disappearance and shall be and remain in full force and effect so long as it shall be reasonably necessary or convenient to carry out the terms of this Agreement.

Planning Lawyer's consent and appointment of Back-Up Lawyer includes, but is not limited to, the following:

Entering Planning Lawyer's law office(s) and using Planning Lawyer's equipment and supplies, as needed, to shut down and close the law practice of Planning Lawyer as expeditiously as appropriate;

Receiving, accepting and opening Planning Lawyer's mail and processing it;

Taking possession and control of all property and equipment comprising Planning Lawyer's law office(s), including, but not limited to, client files and records, computers and other electronic devices, etc.;

Examining client files and records of Planning Lawyer's law office(s) and obtaining information about any pending matters that may require attention;

Notifying clients, potential clients and others who appear to be clients that Planning Lawyer is no longer able to continue in the practice of law, that Planning Lawyer has given advance authority to Back-Up Lawyer to shut down and close Planning Lawyer's law practice and communicate such notice, and that it is now in their best interests to seek and obtain other legal counsel;

Copying the files of Planning Lawyer and Planning Lawyer's clients;

Obtaining client consent to transfer client files and client property to new lawyers;

Transferring/Releasing client files and property to clients or their new lawyers;

Obtaining client consent to obtain extensions of time and contacting opposing counsel, courts/administrative bodies and others to obtain extensions of time;

Applying for extensions of time pending employment of other counsel by clients;

Filing notices, motions and/or 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 Lawyer has given this authorization;

Arranging for transfer, storage and/or appropriate destruction of closed files;

Winding down the financial affairs of Planning Lawyer's law practice, including, but not limited to: administration and reconciliation of all business/law office bank accounts, including client trust accounts (both IOLTA and non-IOLTA client trust accounts), operating accounts, escrow accounts, payroll accounts, etc.; providing to the clients of Planning Lawyer a final accounting and statement of legal services rendered by Planning Lawyer; where appropriate, return of client funds, collection of fees, costs and expenses on behalf of Planning Lawyer and/or Planning Lawyer's estate; and closure of business/law office bank accounts when appropriate;

Arranging for an appraisal of Planning Lawyer's law practice for the purpose of valuation and sale of those assets, in whole or in part, as would be reasonable and law may allow, and for the benefit of Planning Lawyer's estate;

And any/all other tasks, duties, responsibilities or acts which may be reasonable in closing the law practice of Planning Lawyer.

By separate legal document to be executed by Planning Lawyer and Back-Up Lawyer, Planning Lawyer also intends to provide a legal, durable Limited Power of Attorney to Back-Up Lawyer such that, in the event of Planning Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance, Back-Up Lawyer will have been designated therein as Authorized Signer, in substitution of Planning Lawyer's own signature, on all of Planning Lawyer's law office bank accounts and safety deposit box(es) with any bank(s), savings and loan(s), homestead(s) or other financial institution(s), including, but not limited to, Planning Lawyer's law office operating account(s), payroll account(s) and client trust account(s)—both IOLTA and non-IOLTA client trust accounts.

Back-Up Lawyer will not be obligated, liable for or responsible in any way for processing or payment of Planning Lawyer's personal expenses or debts.

All banks or other financial institutions 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.

5. Payment for Services

Planning Lawyer agrees to pay Back-Up Lawyer a reasonable sum for services rendered and costs and expenses incurred by Back-Up Lawyer while closing the law practice of Planning Lawyer. And it is hereby intended that, in the event Planning Lawyer becomes personally unable/unwilling/incapable of tendering that payment due to Planning Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance, that Back-Up Lawyer should still be appropriately reasonably compensated from the proceeds of the ultimately closed law office and/or from the estate of Planning Lawyer. Back-Up Lawyer agrees to keep accurate time and expense records for the purpose of determining amounts due for services rendered and costs and expenses incurred in closing the law practice of Planning Lawyer. It is specifically agreed and understood that Back-Up Lawyer will provide

any such services strictly as an independent contractor, and not as an employee, co-owner, joint-venture participant, business partner or associate of Planning Lawyer.

6. Preserving Confidentiality and Attorney-Client Privilege

Back-Up Lawyer agrees to preserve and maintain as confidential all information related to Planning Lawyer's representation of Planning Lawyer's clients and, where necessary, to make reasonable efforts to assert and preserve their attorney-client privilege. Back-Up Lawyer shall make disclosures of information only as reasonably necessary to carry out the purpose of this Agreement.

7. Back-Up Lawyer is Not Attorney for Planning Lawyer

While fulfilling the terms of this Agreement, Back-Up Lawyer is not the attorney for Planning Lawyer. Back-Up Lawyer has permission to inform the clients of Planning Lawyer of any errors, omissions, or potential errors and instruct them to seek and obtain independent legal advice. Because of Back-Up Lawyer's own ethical obligations imposed by Rule 8.3 of the Louisiana Rules of Professional Conduct, Back-Up Lawyer also has permission—and Planning Lawyer understands, consents and acknowledges that Rule 8.3 may obligate Back-Up lawyer—to inform the clients of Planning Lawyer and the Office of Disciplinary Counsel for the Louisiana Attorney Disciplinary Board of any ethics violations committed by Planning Lawyer and discovered by Back-Up Lawyer while closing the law practice of Planning Lawyer.

8. Providing Legal Services

Planning Lawyer authorizes, consents and understands that, if/when the conditions noted within Section 4 of this Agreement are in effect, Back-Up Lawyer may enter into a new, separate lawyer-client relationship with any of the clients of Planning Lawyer for the provision of new or additional legal services to those clients, provided that Back-Up Lawyer does not have a conflict of interest that cannot be cured by client consent, seeks and obtains the informed, written consent of those clients to the proposed new representation and enters into a new, separate written lawyer-client agreement with respect to the terms, conditions and compensation for the new representation of those clients by Back-Up Lawyer in connection with those new or additional legal services.

9. Providing Clients with an Accounting

Back-Up Lawyer agrees to provide the clients of Planning Lawyer with a final accounting and statement for legal services rendered by Planning Lawyer based on the available/accessible records of Planning Lawyer. Back-Up Lawyer agrees, when appropriate, to return unearned or unused funds held in trust to clients and third parties and to submit funds collected on behalf of Planning Lawyer to Planning Lawyer, or the appropriate legal representative of Planning Lawyer or Planning Lawyer's estate.

10. Alternate Back-Up Lawyer

If Back-Up Lawyer is unable or unwilling to act on behalf of Planning Lawyer, Back-Up Lawyer may appoint an alternate (hereinafter, "Alternate Back-Up Lawyer") and Back-Up Lawyer shall enter into an agreement with any such Alternate Back-Up Lawyer consistent with the terms of this Agreement and under which Alternate Back-Up Lawyer consents and agrees to the terms and provisions of this Agreement.

11. Indemnification

Planning Lawyer agrees to indemnify Back-Up Lawyer against any claims, losses or damages arising out of any act or omission by Back-Up Lawyer under this Agreement, provided the acts or omissions of Back-Up Lawyer were made in good faith, were made in a manner reasonably believed to be in the best interests of the clients of Planning Lawyer and Planning Lawyer, and occurred while Back-Up Lawyer was assisting with the closure of Planning Lawyer's law practice as contemplated within Section 4 of this Agreement. However, Back-Up Lawyer remains and shall be fully responsible for any and all acts and omissions of gross negligence and/or willful/intentional misconduct.

This indemnification provision does not extend to nor is it intended to cover in any way any acts, errors or omissions of Back-Up Lawyer when acting as lawyer for the clients of Planning Lawyer under the circumstances referenced in Section 8 of this Agreement.

12. Fee Disputes to be Submitted to Fee Arbitration

Planning Lawyer and Back-Up Lawyer agree that any/all fee disputes among them will be decided by the Louisiana State Bar Association's Fee Dispute Resolution Program.

13. Termination

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

If Back-Up Lawyer, and/or Alternate Back-Up Lawyer, for any reason terminate(s) this Agreement, or is/are terminated, Back-Up Lawyer, and/or Alternate Back-Up Lawyer, shall, within thirty (30) days of termination or resignation, provide: 1) a full and accurate accounting of any/all financial activities undertaken on behalf of Planning Lawyer; and 2) all of the files, records and funds of Planning Lawyer's law practice in possession/under control of Back-Up Lawyer and/or Alternate Back-Up Lawyer to Planning Lawyer, or to the appropriate legal representative of Planning Lawyer or Planning Lawyer's estate.

14. Severability

If, for any reason, any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable by a court of competent jurisdiction, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

_____ _____

Planning Lawyer Back-Up Lawyer

_____
Alternate Back-Up Lawyer

ACKNOWLEDGMENTS

State of Louisiana

Parish of _____

Before me, the undersigned Notary Public, personally came and appeared _____, a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, who, after being duly sworn by me, did state and declare:

That he/she is the person named as "Planning Lawyer" within the foregoing Agreement and that he/she has freely and with full knowledge and understanding signed and executed said Agreement.

Thus done and signed by me, this ____ day of _____, _____, at _____, Louisiana.

_____
Planning Lawyer

_____
Notary Public
My Commission Expires: _____

* *

State of Louisiana

Parish of _____

Before me, the undersigned Notary Public, personally came and appeared _____, a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, who, after being duly sworn by me, did state and declare:

That he/she is the person named as "Back-Up Lawyer" within the foregoing Agreement and that he/she has freely and with full knowledge and understanding signed and executed said Agreement.

Thus done and signed by me, this ____ day of _____, _____, at _____, Louisiana.

_____
Back-Up Lawyer

_____
Notary Public
My Commission Expires: _____

* *

State of Louisiana

Parish of _____

Before me, the undersigned Notary Public, personally came and appeared _____, a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, who, after being duly sworn by me, did state and declare:

That he/she is the person named as "Alternate Back-Up Lawyer" within the foregoing Agreement and that he/she has freely and with full knowledge and understanding signed and executed said Agreement.

Thus done and signed by me, this ____ day of _____, _____, at _____, Louisiana.

_____
Alternate Back-Up Lawyer

_____
Notary Public
My Commission Expires: _____

APPENDIX B

SAMPLE

DURABLE LIMITED POWER OF ATTORNEY

FOR BANKING ACCESS and SIGNATURE AUTHORITY

State of Louisiana
Parish of _____

Before me, the undersigned Notary Public, personally came and appeared _____, ("Affiant") a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, who, after being duly sworn by me, did state and declare:

That Affiant does hereby name and appoint

_____,

a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, as Affiant's agent and Attorney-in- Fact ("Attorney-in-Fact") for the limited purpose of conducting all transactions and taking any actions that Affiant might otherwise do himself/herself with respect to any or all of Affiant's law office bank account(s) and safe deposit box(es), including, but not limited to, any/all client trust accounts—IOLTA and non-IOLTA client trust accounts—escrow accounts, law office operating accounts, etc.

Affiant does hereby further authorize any/all banking and financial institutions where Affiant has maintained such account(s) and/or safe deposit box(es) to transact/administer/manage/manipulate Affiant's account(s) as directed by Affiant's Attorney-in-Fact and to afford Affiant's Attorney-in-Fact all rights and privileges that Affiant would otherwise have for himself/herself with respect to Affiant's account(s) and/or safe deposit box(es).

Specifically, Affiant does hereby appoint, designate and authorize Attorney-in-Fact to: sign Affiant's name on checks, notes, drafts, orders or instruments for deposit; withdraw or transfer funds to or from Affiant's account(s); make or authorize electronic transfers of funds; receive statements and notices on Affiant's account(s); and do anything with respect to the account(s) that Affiant would otherwise be able to do himself/herself. Affiant does also authorize Attorney-in-Fact to enter and open Affiant's 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 Affiant would otherwise be able to do himself/herself, even if Attorney-in-Fact has no legal interest in the property in the box(es).

This Limited Power of Attorney shall remain in full force and effect, unaffected by Affiant's subsequent death, disability, incapacity, serious professional discipline, serious victimization by disaster or disappearance, unless and until the bank or financial institution receives: 1) Affiant's own written revocation of this Limited Power of Attorney; or 2) specific written instructions from Attorney-In-Fact, signed by Attorney-in-Fact, to stop honoring the signature of my Attorney-in-Fact.

Thus done and signed by me, this ____ day of _____, _____, at _____, Louisiana.

_____
Affiant

_____
Notary Public
My Commission Expires: _____

ACCEPTANCE

State of Louisiana

Parish of _____

Before me, the undersigned Notary Public, personally came and appeared _____, a person of the full age of majority and a resident of the State of Louisiana, Parish of _____, who, after being duly sworn by me, did state and declare:

That he/she is the person named and appointed as "Attorney-in-Fact" within the foregoing Agreement and that, by his/her signature below, he/she has freely and with full knowledge and understanding accepted the appointment as Attorney-in-Fact.

Thus done and signed by me, this ____ day of _____, _____, at _____, Louisiana.

_____
Attorney-in-Fact

_____
Notary Public
My Commission Expires: _____

APPENDIX C

SAMPLE

LETTER OF UNDERSTANDING

TO: _____

I am enclosing a signed, notarized original document entitled "Durable Limited Power of Attorney For Banking Access and Signature Authority" in which I have named _____ as my "Attorney-in-Fact". You and I have already discussed and agreed that you will do the following:

1) Upon my written request, you will deliver the signed, notarized original document entitled "Durable Limited Power of Attorney For Banking Access and Signature Authority" to me or to any person whom I designate.

2) You will deliver the signed, notarized original document entitled "Durable Limited Power of Attorney For Banking Access and Signature Authority" to the person named therein 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 own best judgment, that I am unable to conduct my own business affairs due to death, disability, impairment, incapacity, serious professional discipline, disaster or disappearance. In determining whether to deliver the signed, notarized original document entitled "Durable Limited Power of Attorney For Banking Access and Signature Authority", you may use any reasonable means you deem adequate, including consultation with my family members, loved ones, trusted friends and physician(s). If you act in good faith, you will not be liable for any acts or omissions on your part in reliance upon your own best judgment and belief.

3) If you incur any reasonable expenses in assessing whether you should deliver the signed, notarized original document entitled "Durable Limited Power of Attorney For Banking Access and Signature Authority", I (or my estate) will compensate you for the expense incurred.

4) You do not have any duty or obligation to check with me from time to time to determine whether I am able to conduct my own business affairs. I expect that if the circumstances as outlined above in Item 2 occur, you will be notified by one or more of my family members, loved ones, friends, colleagues, law enforcement authorities, lawyer disciplinary authorities and/or the Louisiana State Bar Association.

_____ _____

Planning Lawyer | Date

_____ | _____

Spouse, Trusted Family Member or Friend | Date

APPENDIX D

SAMPLE

NOTICE OF DESIGNATED BACK-UP LAWYER

To: Louisiana State Bar Association
Attn: Membership Department
601 St. Charles Avenue
New Orleans, LA 70130

Re: Notice of Authorized/Designated "Back-Up Lawyer"
[and Authorized/Designated "Alternate Back-Up Lawyer"]

Please be advised that I, _____, Louisiana State Bar Association Bar Roll Number _____, as "Planning Lawyer", have prepared a "Back-Up Plan" captioned ***Agreement to Close Law Practice*** to be utilized in the event of my death, disability, impairment, incapacity, serious victimization by disaster, serious discipline or disappearance—any of which renders me unable/unwilling/unfit to continue with the practice of law. And I have therein authorized and designated the following lawyer(s) to assist with the shutdown and closure of my law practice in accordance with the terms of that "Back-Up Plan" agreement:

Name of Authorized/Designated Back-Up Lawyer: _____
LSBA Bar Roll#: _____
Address: _____
_____
Telephone: _____
Email: _____

[For Alternate Back-Up Lawyer, If applicable]

Please be advised that I, _____, have authorized and designated the following lawyer to assist with the closure of my law practice:

Name of Authorized/Designated
Alternate Back-Up Lawyer: _____

LSBA Bar Roll#: _____

Address: _____

_____

Telephone: _____

Email: _____

APPENDIX E

SAMPLE LIMITED SCOPE REPRESENTATION LANGUAGE

To be Included Within All Written Lawyer-Client Engagement/Representation Agreements/Contracts:

"…Client understands and agrees that, in an effort to protect the rights and interests of Client, Lawyer may appoint another lawyer to serve as "Back-Up Lawyer" to assist with the closure of Lawyer's law practice/office in the event of Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance. In such event, Client agrees that the "Back-Up Lawyer" can review Client's confidential file(s) to protect Client's rights and interests, and can assist with the shutdown and closure of Lawyer's law practice/office. Client understands, acknowledges and expressly agrees that, unless and until the event of Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance, "Back-Up Lawyer" shall have no involvement with, knowledge of or professional responsibility for the legal representation of Client in the legal matter which is the subject of this representation.

Client also understands, acknowledges and expressly agrees that, in the event of Lawyer's death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance, "Back-Up Lawyer" will serve primarily/strictly only as a "temporary stand-in/transitional lawyer" for purposes of allowing for time/affording an opportunity for Client to seek, find and retain a new/different lawyer to take over Client's matter(s) and receive Client's file(s). Finally, Client further understands, acknowledges and expressly agrees that if, for some reason, Client and "Back-Up Lawyer" might choose, instead, to continue under a more permanent/on-going Client-Lawyer relationship, a separate, brand-new Lawyer-Client contract/engagement agreement will then need to be executed by them, independent of Lawyer's "Back-Up Plan" and this original Lawyer-Client agreement being executed now between Client and Lawyer…"

APPENDIX F

SAMPLE ENGAGEMENT LETTER LANGUAGE

To be Included Within All Written Engagement Letters:

"...I also want to do whatever I can to try and protect your rights and interests in the event of my unexpected/untimely death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance. In an effort to do so, I have arranged with another lawyer to step in and assist with the shutdown and closing of my law practice under those unusual circumstances. Should anything of that nature occur while I am representing you, you should be contacted by someone from my office staff or by the lawyer whom I have designated as my "Back-Up Lawyer" with information about how your case and file materials will be handled until you are able to find and hire another lawyer to take over your case..."

APPENDIX G

SAMPLE

LETTER ADVISING THAT PLANNING LAWYER IS UNABLE

TO CONTINUE WITH LAW PRACTICE

(Sent by "Back-Up Lawyer" or other 3rd Party/"Receiver Lawyer")

To: Name of Client
Address

Re: [Insert Case Name(s)/File Number(s)/Matter Description(s)/Etc.]

Dear Client:

I regret to inform you that, due to [death, disability, impairment, incapacity, serious professional discipline, serious victimization by disaster or disappearance], [Name of "Planning Lawyer"] can no longer continue with his/her law practice and can no longer represent you as your lawyer. For that reason, you will need to seek and hire another lawyer to represent you in your legal matter(s). I will be assisting ["Planning Lawyer"] with the closing of his/her law practice. It is strongly recommended that you seek and hire another lawyer immediately so that your legal rights and interests can be best protected.

How to Get Your Legal File(s):

Active/Current File(s)

You and your new lawyer will need your legal file(s) from ["Planning Lawyer"]. To aid in the transfer of your file(s), I am enclosing a written authorization form [***CLIENT AUTHORIZATION FOR TRANSFER OF LEGAL FILE(S) TO NEW LAWYER***] which will allow me/us to release and transfer your file(s) directly to your new lawyer. Your signature on that form and return to me/us will authorize and permit me/us to release your file(s) to your new lawyer.

Alternatively, if you prefer, you can come to [Insert address of office or location for file retrieval], sign a slightly different written release form and pick up your file(s) so that you can deliver it yourself directly to your new lawyer. In either case, it is very important that you make arrangements for you or your designated agent to pick up your file(s) or have us transfer your file(s) to you or your new lawyer by [day of week, date]. You must act promptly so that your legal rights and interests will be protected.

Closed File(s)

If ["Planning Lawyer"] might also have any closed file(s) for you for any other legal matter(s) besides the one(s) referenced above, those closed files will be/are stored at [location of closed files]. If you want or need your closed file(s), please contact me/us promptly to arrange for me/us to transfer the closed file(s) to you, as well. As I/we will be closing the law practice of ["Planning Lawyer"], it is very important that you make arrangements for us to send to you—or for you to retrieve from us—any/all of your closed file(s) by [day of week, date], since, under your original agreement with ["Planning Lawyer"], I/we will not be obligated to continue to store/preserve any such closed file(s) after that date.

Final Accounting

In connection with the closure of the law practice of ["Planning Lawyer"], you will also receive a final accounting from me/["Planning Lawyer'] within a few weeks. That final accounting will show and include any outstanding balances you might owe to ["Planning Lawyer"] for fees and/or costs and/or expenses, as well as an accounting of any funds still being held for you in the client trust account of ["Planning Lawyer"]. It is my/our goal and intention to try and get this final accounting to you as soon as reasonably possible under the circumstances. Your patience, cooperation and assistance with this process will be most appreciated.

Sincerely,

["Back-Up Lawyer"]

APPENDIX H

SAMPLE

LETTER ADVISING THAT "PLANNING LAWYER" IS CLOSING

HIS/HER OWN LAW PRACTICE

(Sent by "Planning Lawyer")

To: Name of Client
Address

Re: [Insert Case Name(s)/File Number(s)/Matter Description(s)/Etc.]

Dear Client:

Please be advised that, as of [date], I will be closing my law practice due to [retirement or disability, impairment, incapacity, serious professional discipline or serious victimization by disaster]. For that reason, I regret that I will be unable to continue to be your lawyer or to represent you in your legal matter(s).

I recommend that you immediately seek and hire another lawyer to handle your legal matter(s) for you. You are, of course, free to hire any lawyer(s) you wish, or, if I can, I will be happy to provide you with a list of local lawyers who might practice in the area(s) of law relevant to your legal needs. In addition, you can also contact the local bar association, which likely has a "lawyer referral service" and may be able to provide you with the name(s) and contact information for one or more local lawyers who might practice in the area(s) of law in question. Please understand that it is imperative that you find and hire a new lawyer as soon as possible in order to best protect your rights and interests. [Insert any appropriate information about time limitations, deadlines, prescriptive periods, etc., that client should be told]. Please let me know the name of and how I can contact your new lawyer by [date].

How to Get Your Legal File(s):

Active/Current File(s)

You and your new lawyer will need your legal file(s) from my office. To aid in the transfer of your file(s), I am enclosing a written authorization form [***CLIENT AUTHORIZATION FOR TRANSFER OF LEGAL FILE(S) TO NEW LAWYER***] which will authorize and permit me/us to release and transfer your file(s)

directly to your new lawyer. Your signature on that form and return to me/us will allow me/us to release your file(s) to your new lawyer.

Alternatively, if you prefer, you can come to [address of office or location for file retrieval], sign a slightly different written release form and pick up your file(s) so that you can deliver it yourself directly to your new lawyer. In either case, it is very important that you make arrangements for you or your designated agent to pick up your file(s) or have me/us transfer your file(s) to you or your new lawyer by [day of week, date]. You must act promptly so that your legal rights and interests will be protected.

Closed File(s)

If I might also have any closed file(s) for you for any other legal matter(s) besides the one(s) referenced above, those closed files will be/are stored at [location of closed files]. If you want or need your closed file(s), please contact me promptly to arrange for me to transfer the closed file(s) to you, as well. As I will be closing my law practice, it is very important that you make arrangements for me to send to you—or for you to retrieve from me—any/all of your closed file(s) by [day of week, date], since, under your original agreement with me, I will not be obligated to continue to store/preserve any such closed file(s) after that date.

Final Accounting

In connection with the closure of my law practice, you will also receive a final accounting from me within a few weeks. That final accounting will show and include any outstanding balances you might owe to me for fees and/or costs and/or expenses, as well as an accounting of any funds still being held for you in my client trust account. It is my goal and intention to try and get this final accounting to you as soon as reasonably possible under the circumstances; your patience, cooperation and assistance with this process will be most appreciated.

Please be advised that you will be able to contact me at the address and telephone number noted within this letter until [date]. After that time, you or your new lawyer should be able to reach me at [Lawyer's secondary address/contact information].

Remember that it is absolutely critical that you seek and hire a new lawyer as soon as possible. That will be the only way that any time limitations, etc, applicable to your legal matter can be observed and your legal rights and interests protected.

I am, of course, most grateful for having had the opportunity to serve as your lawyer. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

[Lawyer]

APPENDIX I

SAMPLE

CLIENT AUTHORIZATION FOR TRANSFER OF LEGAL FILE(S) TO NEW LAWYER

I, Client, hereby authorize ["Back-Up Lawyer"]/["Planning Lawyer"] to transfer/deliver my legal file(s) to my new lawyer, _____, at the following address:

_____

_____

_____

_____ _____

Client Date

APPENDIX J

SAMPLE

CLIENT'S REQUEST FOR DIRECT SURRENDER OF LEGAL FILE(S)

I, Client, hereby request that ["Back-Up Lawyer"]/["Planning Lawyer"] transfer/deliver my legal file(s) directly to me at the following address:

_____

_____

_____

_____ _____

Client Date

APPENDIX K

SAMPLE

CLIENT'S ACKNOWLEDGMENT OF RECEIPT OF LEGAL FILE(S)

I, Client, hereby acknowledge that I have received my original legal file(s) from ["Back-Up Lawyer"]/["Planning Lawyer"].

Original File(s) Received: _____
File #(s)/Case Name(s)/Matter Description(s)/Etc.

_____ _____
Client Date

APPENDIX L

SAMPLE

WILL PROVISION(S) TO BE INCLUDED WITHIN PLANNING LAWYER'S

LAST WILL AND TESTAMENT (Modify as Appropriate)

I, Testator, hereby nominate and appoint [my spouse, family member, loved one or trusted friend], a person of the full age of majority and a resident of the Parish of _____, State of Louisiana, to be and serve as Executor/trix of my estate and without the necessity of posting any bond. My Executor/trix shall be entitled to reasonable compensation for serving as such at the time such services are rendered, or as soon as reasonably practicable thereafter—whichever is possible first.

I confer upon my Executor/trix all rights and powers available under Louisiana law needed to properly deal with and close my estate. To that end, my Executor/trix is also empowered to aid in the closure and shutdown of my law practice, should it still remain in existence at the time of my death. Because of the fact that orderly planning for the protection of the rights and interest of my clients, as well as dealing with the expedient and efficient closure and shutdown of my law practice, are of great importance to me and to my clients, I have also entered into a written "Agreement to Close Law Practice", dated _____, regarding the shutdown and closure of my law practice. In that Agreement, I am referred to as "Planning Lawyer" and _____ is referred to as my "Back-Up Lawyer" [and _____ is referred to as my "Alternate Back-Up Lawyer"].

It is my full and clear intention now to incorporate that Agreement in its entirety into this, my Last Will and Testament, as if that entire Agreement were actually written and copied herein *in extenso*, it being my goal, intention and sincere wish that, by doing so, the terms and conditions of that Agreement will survive my death and inure to the benefit of my clients. It is my intent and desire that my Executor/trix honor the terms and conditions of that Agreement, engaging and compensating the "Back-Up Lawyer" [and "Alternate Back-Up Lawyer"] named within that Agreement to aid in the orderly shutdown and closure of my law practice, as per the terms and conditions of that Agreement.

In the event that the person named as my "Back-Up Lawyer" [and as my "Alternate Back-Up Lawyer"] in that Agreement should predecease me, be unwilling or unable for any reason to serve as "Back-Up Lawyer" [or as "Alternate Back-Up Lawyer"], or should begin serving but not complete the service/task as "Back-Up Lawyer" [of as "Alternate Back-Up Lawyer"], my Executor/trix is hereby authorized and empowered,

within his/her sole discretion, to engage the services of another lawyer to serve effectively as the "Back-Up Lawyer" and to proceed with the orderly shutdown and closure of my law practice, as much as possible in keeping with the terms and conditions of that Agreement so that the interests of my clients are reasonably protected.

APPENDIX M

Current (2017) Louisiana Rules of Professional Conduct:

Rule 1.17. Sale of a Law Practice (effective 07/01/2016)

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

(a) The selling lawyer has not been disbarred or permanently resigned from the practice of law in lieu of discipline, and permanently ceases to engage in the practice of law, or has disappeared or died;

(b) The entire law practice, or area of law practice, is sold to another lawyer admitted and currently eligible to practice in this jurisdiction;

(c) At least ninety (90) days in advance of the sale, actual notice, either by in-person consultation confirmed in writing, or by U.S. mail, is given to each of the clients of the law practice being sold, indicating:

(1) the proposed sale of the law practice;

(2) the identity and background of the lawyer or law firm that proposes to acquire the law practice, including principal office address, number of years in practice in Louisiana, and disclosure of any prior formal discipline for professional misconduct, as well as the status of any disciplinary proceeding currently pending in which the lawyer or law firm is a named respondent;

(3) the client's right to choose and retain other counsel and/or take possession of the client's files(s); and

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

(d) In addition to the advance notice to each client described above, at least thirty (30) days in advance of the sale, an announcement or notice of the sale of the law practice, including the proposed date of the sale, the name of the selling lawyer, the name(s) of the purchasing lawyer(s) or law firm(s), and the address and telephone number where any person entitled to do so may object to the proposed sale and/or take possession of a client file, shall also be published: 1) in the ***Louisiana Bar Journal***; and 2) once a week for at least two (2) consecutive weeks in a newspaper of general circulation in the city or town (or parish if located outside a city or town) in which the principal office of the law practice is located. The announcement or

notice required by this Rule does not fall within the scope of Rules 7.1 through 7.10 of these Rules.

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

(f) (1) A lawyer or law firm that proposes to acquire a law practice may be provided, initially, with only enough information regarding the matters involved reasonably necessary to enable the lawyer or law firm to determine whether any conflicts of interest exist. If there is reason to believe that the identity of a client or the fact of representation itself constitutes confidential information under the circumstances, such information shall not be provided to the purchasing lawyer or law firm without first advising the client of the identity of the purchasing lawyer or law firm and obtaining the client's informed consent in writing to the proposed disclosure.

If the purchasing lawyer or law firm determines that a conflict of interest exists prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the lawyer or law firm shall not review or continue to review the information unless the conflict has been disclosed to and the informed written consent of the client has been obtained.

(2) A lawyer or law firm that proposes to acquire a law practice shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the clients of the law practice were already the clients of that acquiring lawyer or law firm.

(g) Consistent with Rule 1.16(c) of these Rules, before responsibility for a matter in litigation can be sold as part of a law practice, any necessary notice to and permission of a tribunal shall be given/obtained.

(h) Notwithstanding any sale, the client shall retain unfettered discretion to terminate the selling or purchasing lawyer or law firm at any time, and upon termination, the selling or purchasing lawyer in possession shall return such client's file(s) in accordance with Rule 1.16(d) of these Rules.

Rule 5.4. Professional Independence of a Lawyer (effective 07/01/2016)

(a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:…

(4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and…

APPENDIX N

Rules of the Supreme Court of Louisiana: Rule XIX:

Section 26. Notice to Clients, Adverse Parties, and Other Counsel.

A. Recipients of Notice; Contents. Within thirty days after the date of the court order imposing discipline, transfer to disability inactive status, or permanent resignation, a respondent who permanently resigns in lieu of discipline, or a respondent who is disbarred, transferred to disability inactive status, placed on interim suspension, or suspended for more than six months shall notify or cause to be notified by registered or certified mail, return receipt requested:

(1) all clients being represented in pending matters;
(2) any co-counsel in pending matters; and
(3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order.

The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

B. Special Notice. The court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

C. Duty to Maintain Records. The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs A and B, and shall make those records available to the disciplinary counsel on request. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement or readmission.

D. Return of Client Property. The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

E. Effective Date of Order; Refund of Fees. Court orders imposing discipline or transfer to disability inactive status are effective in accordance with La. C.C.P. Art. 2167, unless otherwise ordered. Orders imposing discipline in accordance with Section 20, orders which impose an interim suspension, and permanent resignation orders are effective immediately, unless otherwise ordered by the court. The respondent shall refund within thirty days after entry of the order any part of any fees paid in advance that has not been earned.

F. Withdrawal from Representation. In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that

event file with the court, agency or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

G. New Representation Prohibited. Prior to the effective date of the order, if not immediate, the respondent shall not agree to undertake any new legal matters between service of the order and the effective date of the discipline.

H. Affidavit Filed with Court. Within thirty days after the effective date of the disbarment or suspension order, order of transfer to disability inactive status, or order of permanent resignation, the respondent shall file with this court an affidavit showing:

(1) Compliance with the provisions of the order and with these rules;
(2) All other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;
(3) Residence or other addresses where communications may thereafter be directed; and
(4) Service of a copy of the affidavit upon disciplinary counsel.

APPENDIX O

Rules of the Supreme Court of Louisiana: Rule XIX:

Section 27. Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.

A. Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

APPENDIX P

SAMPLE

LETTER TO LOUISIANA STATE BAR ASSOCIATION

SEEKING/REQUESTING "INACTIVE" STATUS

Secretary, Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130
Attn: LSBA Membership Department

Re: Request for "Inactive" Status
[Lawyer Name], LSBA Bar Roll # [Bar Roll #]

Dear LSBA Secretary/Membership Department:

Please be advised that, pursuant to Section 4, Article IV of the current Articles of Incorporation of the Louisiana State Bar Association, I am hereby seeking and requesting to be placed on "inactive" status, effective [immediately or as of "X" date]. Kindly please confirm for me in writing that this request has been received, properly made and that I will, in fact, be placed on "inactive" status, as requested.

Sincerely,

[Lawyer]

APPENDIX Q

SAMPLE

LETTER TO PRESIDING JUDGE SEEKING/REQUESTING

RULE XIX, §27 APPOINTMENT OF "RECEIVER LAWYER"

The Honorable Judge [X]
Division [X],
Parish of [X]
[X] Street
[X], LA 7[XXXX]

Re: Request for Appointment of Counsel to
Act as Receiver/Inventory Client Files of
Lawyer [X], [recently deceased/disciplined/impaired/missing],
LSBA Bar Roll # [LSBA Bar Roll #]

Dear Judge [X]:

On XX/XX/XXXX, [Name of "Lawyer-in-Question"], a Louisiana-licensed lawyer practicing in your jurisdiction, Louisiana Bar Roll Number [LSBA Bar Roll #], with a law office currently located at [Office Address of "Lawyer-in-Question"], in the Parish of [X], [passed away/was suspended/disbarred/resigned permanently from the practice of law/became seriously impaired/disabled/incapacitated/victimized by disaster/was declared missing by local law enforcement authorities/etc.]. Please see enclosed documentation in support of those facts. [e.g., attach copy of the death certificate of [Name of "Lawyer-in-Question"], obituary, medical records, news articles, police reports, etc.]

Based on that information, it is reasonably believed and appears highly unlikely that [Name of "Lawyer-in-Question"] will be able to [return to/resume/continue] with the practice of law [from this point forward/until X date]. At this point, there is also no record/information available or known to indicate that [Name of "Lawyer-in-Question"] has nominated or otherwise arranged for any other lawyer, under such circumstances, to step in and protect the interests of his/her clients, inventory his/her client files, deliver/surrender files, property and any funds held in trust, as appropriate, to those clients or to their new counsel, or, ultimately, to handle the orderly shutdown and closure of his/her law practice. I have also

checked with the family/next-of-kin for [Name of "Lawyer-in-Question"] and they, too, are unaware of any lawyer ever having been nominated or chosen for that purpose.

In light of the foregoing, I write now to request, respectfully, pursuant to §27 of Rule XIX of the Rules of the Supreme Court of Louisiana (a copy of which is enclosed for your ease of reference), that you appoint a lawyer (or lawyers) to step in and protect the interests of the clients of [Name of "Lawyer-in-Question"], to inventory his/her client files, to deliver/surrender files, property and any funds held in trust, as appropriate, to those clients or to their new counsel, and, ultimately, to handle the orderly shutdown and closure of his/her law practice.

Additionally, enclosed also please find, for ease of reference, a copy of §26 of Rule XIX, which is what the Supreme Court of Louisiana expects and requires lawyers who have been seriously disciplined to do within thirty (30) days of that discipline being imposed with regard to notice to clients, co-counsel, opposing counsel and/or self-represented opposing parties. [Even though [Name of "Lawyer-in-Question"] is not currently the subject of any order imposing lawyer discipline,] [T]hat Rule may still provide some basic guidance to the Court and to the "Receiver Lawyer" who you appoint regarding the minimum of what likely needs to be done here. The Louisiana State Bar Association has also prepared and published a "Practice Transition Handbook" [***Louisiana State Bar Association Practice Transition Handbook: Shutting Down a Law Practice in Louisiana***, 2017] offering guidance on shutting down a law practice under circumstances such as this. It can be found on-line at LSBA.org.

Unless your Honor has a lawyer (or lawyers) already in mind for the appointment now sought, I would volunteer and offer to be appointed as the "Receiver Lawyer" for the law practice of [Name of "Lawyer in Question"]. To that end, respectfully, I have also taken the liberty of preparing and enclosing a proposed Order for this appointment.

Respectfully Submitted,

[Would-Be "Receiver Lawyer"]

APPENDIX R

SAMPLE

PROPOSED COURT ORDER FOR

RULE XIX, §27 APPOINTMENT OF "RECEIVER LAWYER"

In Re: [Name of "Lawyer-in-Question"]

[X] JUDICIAL DISTRICT COURT
PARISH OF [X]
STATE OF LOUISIANA

****

ORDER

Whereas, upon due showing and proof being presented to this Court, it appears that [Name of "Lawyer-in-Question"], Louisiana Bar Roll Number [X], with a law office currently located at [Office Address of "Lawyer-in-Question"], in the Parish of [X], [passed away/was suspended/disbarred/resigned permanently from the practice of law/became seriously impaired/disabled/incapacitated/victimized by disaster/was declared missing by local law enforcement authorities/etc.]; and

Whereas the facts at present indicate that [Name of "Lawyer-in-Question"] has not nominated or otherwise arranged for any other lawyer, under such circumstances, to step in and protect the interests of his/her clients, inventory his/her client files, deliver/surrender files, property and any funds held in trust, as appropriate, to those clients or to their new counsel, or, ultimately, to handle the orderly shutdown and closure of his/her law practice; and

Whereas the interests of the public and of the clients of [Name of "Lawyer-in-Question"] are now placed potentially in jeopardy, and the administration of justice may be delayed and/or compromised as a result of these events and circumstances,

IT IS HEREBY ORDERED that [Name of Would-Be "Receiver Lawyer"] be and is hereby appointed, pursuant to §27 of Rule XIX of the Rules of the Supreme Court of Louisiana, as attorney to inventory the files of [Name of "Lawyer-in-Question"] and to take such actions as needed to protect the interest of the public and the clients of [Name of "Lawyer-in-Question"], including, but not limited to: inventorying the client files of [Name of "Lawyer-in-Question"]; delivering/surrendering files, property and any funds held

in trust, as appropriate, to those clients or to their new counsel or to third parties; and, ultimately, to handle the orderly and reasonably expedient shutdown and closure of the law practice of [Name of "Lawyer-in-Question"].

IT IS FURTHER ORDERED that any bank(s), savings and loan(s) or other financial institution(s) currently having any funds on deposit in any client trust account(s)—IOLTA and non-IOLTA client trust accounts—and/or escrow account(s), as well as any other law-office-related bank account(s) (such as operating account(s), payroll account(s), etc.), as well as any safe deposit box(es), opened and maintained by [Name of "Lawyer-in-Question"] in connection with his/her law practice are hereby ordered to permit [Name of Would-Be "Receiver Lawyer"] full and complete access to and signature authority over those accounts and/or boxes—and any funds or property therein—for the limited and specific purpose of fulfilling this appointment for the protection of the interests of the clients and the orderly and reasonably expedient shutdown and closure of the law practice of [Name of "Lawyer-in-Question"].

IT IS FURTHER ORDERED that any person/party having possession of any client files or other records pertaining to the law practice of [Name of "Lawyer-in-Question"] are to so advise [Name of Would-Be "Receiver Lawyer"] and to deliver promptly control and possession thereof to [Name of Would-Be "Receiver Lawyer"] upon his/her request.

IT IS FURTHER ORDERED that, upon appointment, [Name of Would-Be "Receiver Lawyer"] shall reasonably document the progress of the inventory ordered and the actions taken pursuant to satisfying this appointment, including, but not limited to, preparing a detailed final accounting with regard to any/all funds and/or property located, administered, disbursed and/or still remaining undistributed at the conclusion of this appointment, a copy of all of which shall be promptly produced to this Court upon request of the Court or, otherwise, at the conclusion of this appointment.

[City], Louisiana, this _____ day of _____, 2XXX.

_____
J U D G E
[X] JUDICIAL DISTRICT COURT

PLEASE SERVE:
[Name of Would-Be "Receiver Lawyer"]
[Address of Would-Be "Receiver Lawyer"]