

10 STEPS FOR PLANNING AHEAD WITH THE HELP OF AN ASSISTING ATTORNEY

The goals of planning ahead to protect your clients' interests are to help you fulfill your ethical obligations and to reduce your and your estate's legal malpractice exposure. To these ends, the following ten steps are intended to guide you through the process of preparing and implementing your plan to close your law practice with the help of an assisting attorney.

Step 1: Understand What It Takes to Close Your Practice

Planning ahead is about taking steps to close your practice. This involves two primary duties: (1) contacting clients and dealing with client files and (2) winding down your financial affairs. The following are some of the tasks and responsibilities of each duty include:

1. Contacting clients and dealing with client files:
 - Access your client files, computer, phone, emails, and any systems or locations where your client files may be located;
 - Contact your clients for instructions on transferring their files;
 - Send files to the clients or their new attorneys and retain a physical or scanned copy of the files;
 - Obtain extensions of time in litigation matters;
 - Provide all relevant people with notice of your law office closure;
 - Contact the PLF, if necessary, to assist in addressing potential malpractice exposures in specific matters;
 - Take other steps necessary to notify clients, return their files, and store closed files.

2. Winding down your financial affairs
 - Review trust accounting records to determine the balance of each client's funds in the lawyer trust account;
 - Provide clients with a final accounting and billing statement;
 - Make proper disbursements from the trust account, including refunding unearned money to clients;
 - Close the trust account;
 - Collect attorney fees;
 - Draw checks on your operating or business account and pay current office liabilities;
 - Cancel lease, phone, email, and other business services;
 - Take other steps necessary to wind down your financial affairs.

Step 2: Choose an Assisting Attorney and Authorized Signer

To ensure a seamless closure of your practice, selecting an **Assisting Attorney** is a pivotal step in the process. This person—preferably an attorney—should be someone you trust and is willing and capable to assist you. Once you've identified your Assisting Attorney, meet with them to discuss your objectives and particular needs. Create a detailed task list based on Step 1's guidelines, tailored to your situation. Through this collaborative effort, you and your Assisting Attorney will determine the scope of their responsibilities to both you and your clients.

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Another key decision is whether you want the Assisting Attorney to also serve as your personal attorney. Carefully consider the implications of each option:

- If the Assisting Attorney is your attorney - That person may be limited in their ability to represent your clients on certain or all matters. In this situation, the Assistant Attorney owes a fiduciary duty to you, meaning they must act in your best interests. For example, the Assisting Attorney could inform your clients of your legal malpractice or ethical violations only if you consented.
- If the Assisting Attorney is not your attorney – That person may still have an ethical obligation to inform your clients of any error you've made. Whether or not the Assisting Attorney is representing you, that person must be aware of potential conflicts of interest and must check for conflicts when providing legal services to your clients or accessing confidential file information to assist with transferring clients' files.

The next critical action is to arrange for an **Authorized Signer** to access your bank accounts. Consider choosing someone other than your Assisting Attorney to ensure checks and balances and to avoid conflict of interests regarding the lawyer trust account.

Be aware of the benefits and risks of granting another person access to your trust account. If no one else can access your trust account, clients' money will remain there until a court orders access, which takes time and burdens the client. However, if your chosen person misappropriates funds, clients will be harmed, and you will be held responsible. Evaluate your options, weigh the risks, and make an informed choice as to the Authorized Signer.

Step 3: Decide How Your Incapacity Will Be Determined and Type of Access to Files and Accounts

This step requires you to lay out the framework for how your incapacity will be determined and what kind of access your Assisting Attorney will have to your files and accounts. Begin by identifying the circumstances in which you'd want your Assisting Attorney to step in and make decisions on your behalf. Choose who will determine your incapacity and the criteria they will use.

If you delegate this determination to your Assisting Attorney, be clear about the terms of this delegation. Specify the process for determining whether the triggering event has occurred. For example, will the Assisting Attorney need a physician's letter to confirm your incapacitation? Or will their reasonable belief suffice? Also consider whether this authority is limited to a particular period, such as during a vacation. Thoroughly discuss and agree on the terms with your Assisting Attorney. These same considerations apply if you appoint a family member or friend with general power of attorney until the event or contingency occurs. Clear instructions are essential for all involved.

If you opt to delegate the determination to someone else (e.g., a spouse or partner, trusted friend, or family member), have that person keep the relevant documents (e.g., a limited power of attorney for the Assisting Attorney) until that person confirms the triggering event has occurred. Record this arrangement in a signed letter of understanding between you and the

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chosen individual. When the event or contingency occurs, that person will provide your Assisting Attorney with the required power of attorney and other necessary documents.

Additionally, it's important to decide on the level of access the Assisting Attorney will have to your files and accounts. There are two approaches to consider:

- Contingent access – This approach allows your Assisting Attorney to access your files and accounts during a particular period or after a specific event. You can have your Assisting Attorney or another designated individual determine whether the contingency has occurred.
- Noncontingent access – This approach gives the Assisting Attorney complete access to your records and accounts at all times. No condition must be met for that person to gain access.

Regardless of which option you choose, it's vital to establish a clear and well-defined agreement with your Assisting Attorney.

Step 4: Prepare Written Agreement and Necessary Authorization Paperwork

Prepare a written agreement and the necessary authorization paperwork for your Assisting Attorney. These documents will help ensure the clarity and effectiveness of the arrangements you've made in the previous steps.

First, prepare a written agreement with your Assisting Attorney that clarifies their role and authority, the scope of their assistance, their duties and responsibilities, and the terms of compensation. Also prepare a separate agreement with your Authorized Signer if that person is different from the Assisting Attorney.

Second, generate the necessary documentation that will authorize the Assisting Attorney and/or Authorized Signer to access your bank accounts, including the trust account. The types of documents required will depend on the authorization, as described below:

- If authorization is conditional – This authorization restricts access to your bank accounts until a specific condition occurs (e.g., your death, disability, hospitalization, etc.). The paperwork may vary by financial institution. Some may have specific forms that you and your Assisting Attorney and/or Authorized Signer are required to sign. Consider a limited power of attorney, as it is widely accepted by banks. Get written confirmation that your bank will accept your limited power of attorney or other written agreement. Be cautious about using bank-provided power of attorney forms, as they typically grant unconditional authorization to sign on your account.
- If authorization is unconditional – This authorization grants complete access to your accounts. This is generally accomplished by adding the Assisting Attorney and/or Authorized Signer as co-signer on your accounts. You must visit the bank with your Assisting Attorney and/or Authorized Signer and complete the necessary paperwork. Unconditional authorization allows the person to write checks, withdraw money, transfer money, or close the account at any time, regardless of your health status. It's important to note that you will have no control over the signer's access. Considering these risks,

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your choice of co-signer becomes crucial to protecting both your clients' interests and your own.

Carefully consider these options in light of your needs as you decide whether to grant conditional or unconditional authorization for your bank accounts.

Step 5: Discuss Your Arrangements With Appropriate Parties

At this juncture, it's essential to communicate with key individuals about your plan. Inform your spouse, partner, or closest living relatives, as well as the personal representative of your estate, about the existence of this agreement. Provide instructions on how they can contact the Assisting Attorney and/or Authorized Signer.

Make sure your staff knows where you keep the written agreement and how to get in touch with your Assisting Attorney and/or Authorized Signer if an emergency occurs before or after normal office hours. If you practice without staff, make sure your Assisting Attorney and/or Authorized Signer knows how to gain access to your office.

Step 6: Notify Your Clients

Once your agreement has been finalized, notify your clients about your plan and arrangement with the Assisting Attorney and/or Authorized Signer. You may include this information in your retainer agreements and engagement letters, which provides clients with information about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement is written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary.

Step 7: Prepare Pertinent Information for Assisting Attorney

Prepare two documents for your Assisting Attorney to equip them with the necessary information to begin the closure of your practice when the time comes.

The first document contains location and access information about following:

- The software programs you use for case management, file management, calendaring, conflict systems, time/billing, trust accounting, and general accounting, and the login name and password for each program;
- Instructions on how to generate a list of active cases, including client names, addresses, and phone numbers;
- Login information and credentials for your computer, email, voicemail, or any office equipment that requires a password/access code and instructions to access;
- Location of your open and closed files;
- Names of banks, addresses, account signers, and account numbers for all law office bank accounts;
- Location of post office box or other mail service box and instructions for access;
- Location of all law office banking records;

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- Location of trust accounting records, including trust journal, client ledgers, reconciliation reports, etc., or instructions on how to generate reports and pull client trust balances from your trust accounting software.

The second document is a list of names, titles/roles, and contact numbers of people whom your Assisting Attorney may need to contact, including:

- Spouse, adult children, other close family members, or personal representative;
- Professional Liability Fund – Practice Management Attorneys, 503.639.6911;
- Office staff members;
- Landlord;
- Bookkeeper;
- Other important contacts.

Keep these documents with the written agreement and provide them to your Assisting Attorney.

Step 8: Perform Regular Maintenance of Your Office Systems

Regularly maintain your office systems so they are reliable and up-to-date, minimizing the risk of disruption when the Assisting Attorney steps in to close your practice. Make sure you or your staff consistently perform the following tasks:

- Accurately calendar all deadlines and reminders;
- Maintain current timekeeping and billing records;
- Return original documents to clients; and
- Diligently document client files.

Familiarize your Assisting Attorney with your office systems and staff so they have a comprehensive understanding of how your practice operates. Finally, keep your Assisting Attorney apprised of office changes.

Step 9: Review Annually

Set aside time each year to review the written agreement and other authorization paperwork with your Assisting Attorney. Also annually review your retainer agreement or engagement letter to make sure the name of your Assistant Attorney is current. This proactive step will keep your documents relevant and effective. These annual reviews ensure that your arrangements still align with your practice's evolving needs.

Step 10: Take a Deep Breath

Congratulations for making it to the last step of your plan to protect your clients' interests! We hope your plan will give you peace of mind as you continue serving your clients in your law practice.

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