

Succession Planning Guide

for New Hampshire Lawyers



**Planning ahead to protect your Clients' Interests and
Insure a smooth transition upon your Retirement, Death or Disability**



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Acknowledgments

For the process of drafting and editing this Planning Guide, I have reviewed and researched similar efforts in other states. It appears that the Oregon State Bar was the trailblazer on this subject back in 2013. Their work, in one form or another, appears in the handbooks of many other states, some authored by Supreme Court Committees and some by State Bar Associations. I gratefully acknowledge their pioneering work and willingness to share their materials. The same holds true for publications by the Michigan State Bar Association, the New York State Bar Association and the New Mexico Supreme Court Committee on Lawyer Succession and Transition Committee.

All rights are reserved except that members of the New Hampshire Bar Association may use this Planning Guide for assistance in planning to close their law practice, or to plan for an unanticipated event requiring closure. This Planning Guide may be used for educational purposes such as CLE, but only on a noncommercial, not for profit basis. All other rights are reserved.

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New Hampshire Bar Association
George R. Moore, Executive Director
Editor

Preamble

This Guidebook is intended to provide general guidance to attorneys, particularly solo and small firm practitioners, as to steps to take to protect your clients' interest, as well as preserve the assets of your practice.

A large part of the book is dedicated to the planning that should take place prior to an unplanned event such as sudden death or disability, that could immediately require your practice to close. No one likes to think of these things, but such events, if not planned for, can be catastrophic for your clients and you and your family.

The book also covers the situation of an orderly planned retirement and the shutting down of your office. These suggestions are contained in section 3 of the Planning Guide for closing your practice and section 4 on closing your IOLTA trust account. Even if it isn't used, you should have in place the planning in the remainder of the book dealing with winding up your practice if something happens to you where you can't close your own practice.

Additionally, the planning suggested in the Guide will have a positive effect on your ability to sell the asset that is your practice, for the benefit of your family and estate. Even beside the compelling other reasons to plan, getting a return on the investment of your life's work is a concept everyone should understand.

This publication is meant as a general roadmap of actions to be considered and taken. Practitioners situations will be different, and some terms will differ, but the concept of having a plan in place, that everyone, including your clients knows about and agrees with. As discussed in section 1, to do nothing and could cause you to violate your professional obligations of diligence (Rule 1.3) and protecting client's property (Rule 1.15). Under the Code of Professional Responsibility. You should not let your client's interests be compromised by your lack of foresight to your clients.

Chapter 1 – Serving Your Clients by Planning Ahead

Just as we continually urge our clients to do their own estate planning, we as lawyers also have to think about what might happen to our practices, and our clients, upon our disability, retirement, or even worse, our sudden death. This is of particular importance for sole practitioners who may not have a "backup" attorney, but it is equally important for all attorneys by reason of our special relationship with the clients and the duty we owe to them.

To ensure that our client's interests are protected, there are various steps to take NOW to plan for your potential inability to practice law. In New Hampshire there are no specific requirements, but the New Hampshire Bar Association can help you with ethics opinions, articles and corners issued by the New Hampshire Bar Association Ethics Committee, the American Bar Association or other state bars concerning issues that may arise when tragedy strikes, or on a happier note, when you personally decide to retire. While we can always hope for the best, we recommend you plan for the worst-case scenario.

The purpose of this handbook is to help you – particularly those in small firms or solo practices – to develop a plan for your clients in the event your health is such that you cannot be there for them. Unfortunately, disaster can concur, and it is best to have a plan in place to protect your clients.

Parenthetically, many commercial malpractice carriers now require the lawyers they insure to make arrangements for office closure in the event of death or disability, including naming the attorney who will be authorized to step in. This requirement is right on the insurance application or renewal application. Many times, this attorney is described as the "succession attorney". Indeed, while it is not mandatory in New Hampshire, succession planning by lawyers is mandated in certain jurisdictions which have added commentary to their rules of professional conduct and require lawyers to name successor attorneys at their time of their license renewal and develop a comprehensive succession or transition plan.

For now, in New Hampshire, such a program is voluntary, and there are many things that you should consider in developing a plan for your expected or unexpected cessation of practice. While voluntary, our New Hampshire Rules do reference the desirability of setting up such a plan. N.H. Rules of Profession Conduct 1.3 cmt. 5.

As we all know, a lawyer owes a duty to his or her client under our Rules of Professional Conduct to provide representation including competence, diligence, communication, and the safekeeping of confidences and property. The rules are designed so that a lawyer should not abandon a client and the client's legal needs. Thus, while the rules don't expressly address the emergency closing of a practice due to life's events, every lawyer should take affirmative steps to plan for the interruption or cessation of practice. Having such a plan, particularly for those practicing in a solo practice setting, cannot be overstated. By doing so, the attorney can protect the clients, as well as your family, your staff, and your reputation in times of uncertainty. Hopefully this planning will avoid personal and financial strife as family, friends, and colleagues would otherwise be left scrambling to make sense of a lawyer's practice at a time of great personal stress. They would not be in a good position to sell asset which you spent years developing.

In Maine, for example, the requirement is that: "if engaged in the private practice of law in Maine, the name of an active status attorney who has consented to serve as a proxy on behalf of the attorney" Maine Bar Rule 1(g). Each year, every active status lawyer must file on his/her registration form the name of the "proxy" attorney.

Moreover, Maine amended their Professional Conduct Rules to expressly state:
“To fulfill their obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of client interests...such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention...” Maine Rules of Professional Conduct 1.3 Maine does not go further to mandate just what terms should be in the Plan. Maine’s equivalent of the Attorney Discipline Office does publish a handbook for a lawyer closing the practice of another after having been appointed a Receiver by the Court, but it details various filings and petitions with the Court, and presents a very different focus than the voluntary planning involved in the present Planning Guide.

Chapter 2 – Implementing the Plan

The first step in implementing a plan is to survey the state of your practice. Also, consider what type of arrangement or agreement you want to have with the succession lawyer. As you look at your practice, consider such issues as

- ❖ Will the succession attorney take over representation of the clients or simply inventory my files and funds and distribute them to the clients and substitute counsel?
- ❖ Do I want the succession attorney to purchase my practice or just be involved in facilitating the sale? The sale of any Law Practice in New Hampshire is subject to N.H. Rules of Profession Conduct 1.17
- ❖ Do I have an updated client list and an updated list of closed matters that the succession lawyer can easily locate?
- ❖ Does the person who will step in to close or operate my practice know where my files are physically and electronically located, and can they access those files?
- ❖ Do they have the necessary passwords?
- ❖ Will they know where my calendars are located so that all deadlines can be tracked and either met or timely conveyed to substitute counsel?
- ❖ Will they have access to my time and billing records and the know-how to generate bills and collect fees that may be due to me or my estate?
- ❖ Do they have access to my unpaid invoices and instructions on how to make payments that may be outstanding at any given time?
- ❖ Do they know where my operating and trust bank accounts are held, and where the trust ledgers, reconciliations, and other bank account records are located?
- ❖ I need to decide whether to execute a limited power of attorney to the succession lawyer to allow that lawyer to sign on my bank accounts in the event of my disability and I need to determine whether my bank will accept such a power of attorney. Are there documents that I can prepare for my business that will allow the succession lawyer to access my business and IOLTA bank accounts in the event of my death prior to and during the Probate or estate administration process?
- ❖ Should I enter into any other written agreements with the succession lawyer that would involve my client(s) and my practice?
- ❖ Should I arrange for the succession attorney to store my closed files, bank records and office files, or have a different attorney charged with that responsibility?

While these are all questions to be considered in initiating the planning process, the first step is undoubtedly to find someone – an attorney – to close or temporarily manage your practice in event of your death, disability, impairment, or incapacity. The attorney you pick should be someone that you have implicit faith and trust in, and who you are assured will follow through on their obligations. At the outset, you should include in your agreement with the successor attorney, once selected, a signed consent form authorizing the succession attorney to contact your clients for instructions on transferring their files, an authorization to

obtain extensions of time in litigation matters when needed, and an authorization to provide all relevant people with information about the closing of your law practice.

At the beginning of your relationship with the succession attorney, it is crucial that you and the succession attorney establish the scope of the succession attorney's duty to you and to your clients. If the succession attorney is going to represent you as your attorney, he or she may be prohibited from representing your clients on some or possibly all matters. Under this arrangement, the succession attorney would owe his or her fiduciary obligations to you. For example, the succession attorney could inform your clients of your legal malpractice or ethical violations only if you consented. However, on the other hand, if the succession attorney is not going to be your attorney, he or she may have an ethical obligation to inform your clients of any errors. Either way, the succession attorney must be aware of conflict of interest issues and must check for conflicts if he or she is providing legal services to your clients. See, N.H. Rules of Professional Conduct 1.7-1.10. In addition, you need to determine if the succession attorney is acting solely as a friend and colleague or will they be compensated, and if so, at what rate.

One approach would be to have an individual who is to become your authorized signer on your bank accounts be a family member or trusted friend. If that is your wish, make sure your plan acknowledges, that at least with respect to the IOLTA Trust account, that friend has to be bonded and under the direct supervision of the succession attorney. N.H. Supreme Court Rule 50(2) (c)(i) They would make the decision as to whether or not the contingency has occurred that would trigger the succession planning. An alternative approach is to simply provide the discretion to the succession attorney to determine that an event sufficient to trigger the succession planning agreement has occurred. It's all a matter of trust, but it should be expressly set forth in the succession plan.

The same issue applies to the Limited Power of Attorney that you will have granted to the succession attorney. One approach is simply to give the succession attorney the Power of Attorney, to keep in his possession until such time as a qualifying event takes place authorizing the use of the Power of Attorney to access accounts and records. An alternative approach would be to have the Power of Attorney in the possession of the authorized signer and/or the spouse, family member or trusted friend to be provided to the succession attorney once they determine that a sufficient contingency event has occurred. Again, the plan should be specific.

You should give detailed thought to what is the procedure, regardless of who is making the call, for determining if the contingency of an event has occurred. Many planning attorneys will insert language that requires that their personal physician and/or a hospital certify that the event in question has caused you to be disabled in such a way that you cannot continue to practice law or certify that you cannot make decisions for yourself. If the contingency involves your sudden death, your plan should involve a corporate resolution to authorize the succession attorney to access your accounts and records, as a limited Power of Attorney does not survive the death of the Principal. There are cases where attorneys are missing, but it is unknown whether they are deceased, so thought should be given to establishing a specific time frame, such as 30 or 60 days, where there is a presumption of death or disability sufficient to activate the succession plan.

Your agreement with the succession attorney should involve the terms and circumstances whereby after an event has occurred, the succession attorney will have prompt access to your banking accounts and your trust account. This should be expressly set forth where there is a third-party authorized signer. Your agreement should provide specific instructions as to where the succession attorney can find the relevant accounts, passcodes, and security features. If you do not make the specific arrangements so that the succession attorney can promptly access your trust account, your client's money may remain in that account until such time as the authorized signer gets around to providing the information, or a court orders access. The problem to be avoided is that many times the family member or friend does not appreciate the immediate nature of

things that need to be done to protect the clients and are sometimes distrustful of the succession attorney pushing for access to the bank accounts.

In many instances, your clients need the money they have on deposit in your trust account, even if it's just to hire a new lawyer. Any substantial delay puts your client in a difficult position. This delay may prompt ethics complaints and/or malpractice complaints against you or your estate.

The issue of having an “authorized signer” other than the succession attorney is further complicated in N.H. by the Supreme Court requirement that any person authorized to sign on an IOLTA Trust account, if not an attorney, must be bonded and under the direct supervision of an attorney. N.H.S.C. Rule 50 (2) (c) (i). Thus, if the planning attorney wishes a family member to retain signature authority, arrangements need to be made to have a fiduciary bond applied for immediately upon the happening of a triggering event.

Once you've made arrangements and signed the plan with the succession attorney and/or the authorized signer, the next step is to provide your clients with information about your planning. The easiest way to do this is to include the information in your retainer agreements and engagement letters. Going forward this provides clients with information about your succession arrangement at the outset of your relationship and gives them the opportunity to ask questions or express concerns. Your client's signature on the retainer agreement provides written authorization for the succession attorney to proceed on the client's behalf if that becomes necessary. It also provides them with assurance that their property and case will be protected if they choose a new lawyer. For existing clients and former clients, a letter should be prepared describing your plans and held by the succession attorney until the happening of a qualifying event. The letter should make clear that the client is free to choose a different lawyer, and the succession attorney will facilitate that change. An informed client is a happy client.

It is very important that your plan details what will happen to your records and files once active clients have designated what they want to do with their action matters. Presumably, their documents will have been transferred to the succession attorney or a new attorney. Former clients need to be aware of the safekeeping and whereabouts of their files and records. A letter should be sent to former clients to identify the custodian and all contact information. If a recorded message is left on your phone for a designated period of time, it should contain this information. This information is particularly important in the area of your IOLTA Trust account. The N.H. Supreme Court requires that their records be maintained 6 years from the date of closing the law practice. N.H.S.C. Rule 50(2) (B). Moreover, the Court requires that the identity of the custodian and the details of the IOLTA arrangement be disclosed to the Attorney Discipline Office (ADO) as well as the New Hampshire Bar Association at: memberrecords@nhbar.org. N.H.S.C. 50(2) (E). For records other than IOLTA records, while there is no N.H. Supreme Court rule that requires it, the best practice would be to notify the New Hampshire Bar Association (memberrecirds@nhbar.org) of the arrangement and location for storing your files and records. The Bar Association is the database for the Supreme Court and is a convenient clearing house for questions that arise in the future.

Once your agreement with the succession attorney is in place, you should make sure to walk through your office procedures and material locations with the succession attorney. You should make sure that the succession attorney knows where you keep either in hard copy or electronically, the names and addresses and files for all your clients, where you keep deadlines and follow-up dates on your calendaring system, where and how you keep your time and billing records and make sure they're up the date. Familiarize your succession attorney with your office systems, including your various electronic accounts, software programs, and vendors. Finally, if you keep any of your client's original documents, such as wills or other estate plans, make sure the succession attorney knows where they are kept, and if they are secured, where the key, password, or other devices are located to gain access to those original documents. If you maintain original documents in the cloud, make sure that that account is flagged for the succession attorney and he is aware of its existence.

Since most attorneys practice out of a Professional Limited Liability Corporation (PLLC), the planning attorney should make sure that proper corporate resolutions are in place to give the succession attorney appropriate authority to act. This can be accomplished by having a resolution in place that sets forth the circumstances where the succession attorney can act and refer to the Agreement to Close Practice. Additionally, the planning attorney's Last Will & Testament or Trust should clarify the personal representative's role in closing the practice. The provision should avoid potential conflicts of authority. It should be very clear that any funds in the planning attorney's trust account should be handled in accordance with the Agreement to Close Practice with the succession attorney.

Finally, the planning attorney should put in the plan that if the triggering or qualifying event occurs within 60 days of the planning attorney having paid all active status dues, fees and charges, the succession attorney should contact the New Hampshire Bar Association at: memberrecords@nhbar.org to apply for a refund.

If you make these detailed plans, the time spent by your succession attorney in closing your practice should not involve large fees, and if your practice is to be wound down, the proceeds from the sale of your practice assets and/or your accounts receivable will be remitted to you or your estate. This is a far preferable scenario to a disorganized practice, without sufficient planning, which will undoubtedly require a larger investment of time and money and limit the value of your asset. Likewise, if your practice is to be sold, the asset will be more desirable if organized.

Chapter 3 – Checklist for Closing Your Own Office

It is very difficult to find the precise point to begin or end with a checklist of things to be done to close your own solo practice or small firm. While an attempt is made to make the following checklist logical, some suggestions may be out of sequence. As you plan to close your practice, in the months preceding the closure you should do the following, at a minimum.

- ❖ Finalize as many active files as possible and stop taking new matters, or if you are transitioning to a new Firm, make sure to update your clients on the new Firm information and run conflicts checks on new clients with your new Firm.
- ❖ Write to all your clients with active files, telling them the new Firm you will be transitioning to, that you are going to be retiring, or are going to be unable to continue representing them and that they need to retain new counsel. You can suggest substitute counsel or list of counsel that you feel would be appropriate, but such referral is not required. Your letter should inform the clients about the time limitations within which you were going to close your practice, as well as important time frames that refer to their particular cases. Your letter should also explain how and where they can pick up copies of the files and should give them an outside deadline for doing this.
- ❖ For any legal matters in which there are pending court dates, depositions, or hearings, discuss with client how to proceed. When appropriate, request continuances and resetting of hearing or trial dates. Send written confirmations of these extensions' continuances, and trial dates to opposing counsel and your client.
- ❖ If you have cases before administrative bodies, obtain the client's permission to submit a motion in order to withdraw as their attorney of record. The same holds true with court cases so long as you can withdraw without having a material negative effect on the client's case.
- ❖ As soon as the client obtains a new attorney, file a withdrawal in the represented matter.
- ❖ Complete a list or chart of all cases and whether you have withdrawn, or have a motion to do so, and who the new attorney would be for the client.
- ❖ Make copies of all file materials for your clients that are open. Retain your original files. They should either pick up their files or sign an authorization for you to release the files to their new attorneys.
- ❖ Remind your present and former clients of your file retention and destruction policy. Also tell the client where your records will be stored and who they can contact should they need additional records.
- ❖ Have your insurance agent has arranged for the termination of any disability, life, or health insurance with appropriate provisions for staff and yourself as to any COBRA coverage which might be applicable.
- ❖ Arrange with your insurance agent for the termination of all policies pertaining to your law practice.
- ❖ With regard to your malpractice coverage, negotiate tail coverage to cover any claims received after your office is closed.
- ❖ If there is a lease give any necessary notices and negotiate a termination of the leasehold interest. Leave enough time to be able to remove all files and storage.
- ❖ With regard to mail, arrange for a forwarding address where you could review whatever remaining mail comes to your law practice, or make an arrangement with another attorney to receive and review your mail and send to you anything needing attention. Inform correspondents that your law practice is closed.
- ❖ Notify the New Hampshire Bar Association Member Services Department that your law office is closing at the agreed-upon date, and subsequently all communications should be sent to your remaining address together with any updates to your electronic addresses.

- ❖ Discuss with the Bar Association Member Services Department a change in status to active or any other applicable status that you may be entitled to request. You must be on active status in good standing in order to change status so pay any unpaid dues or fees.
- ❖ With regard to computers used in your law practice, get technical assistance if necessary, to make a backup disc or tape. If you are selling or giving away the electronic equipment, make sure that any client information contained on the hard drive is removed prior to transfer to a third party. Deleting files is not enough, you may need to remove and replace the hard drive or use a data deletion service to ensure that the memory is be clean.
- ❖ Make arrangements to file final tax returns with all taxing authorities. Insure that all local payroll and sales taxes have been paid.
- ❖ Make sure you fully account for your IOLTA Trust account as required by N.H.S.C. Rule 50, and disclose to Attorney Discipline Office (ADO) and the New Hampshire Bar Association (memberrecords@nhbar.org) the arrangement details for retaining IOLTA records and accounts. Remember Rule 50 requires 6 years on maintaining IOLTA records.
- ❖ Make suitable plans for storing closed client's files and arrange with a third party to follow your destruction policy if you're not going to do that task yourself. If a third party will be storing you closed files, allow clients to object to the custodian and request the return their files. Retain all "unable to deliver" notices for former clients that can't be located. While not mandatory for non-IOLTA account records, the best practice would be to notify the New Hampshire Bar Association (memberrecords@nhbar.org) of the arrangements for storing all of you files and records, as they are the official member database for the Supreme Court, and are a convenient clearing house for information, if questions arise in the future.
- ❖ Make sure the phone message on your office phone tells people where to go to get information on closed files.
- ❖ Arrange to have phone service disconnect 60 to 120 days after closure.

Chapter 4 – Checklist for Closing Your IOLTA Account

There is nothing more important in closing your law practice than closing your trust account under circumstances where you will not have to revisit the issue in the future.

Once you are prepared to close your Law office, you should do the following things with regard to your IOLTA trust account:

- ❖ Review N.H.S.C. Rule 50 in its entirety.
- ❖ Fully reconcile the IOLTA account. Any funds remaining in the account should correspond to specific clients or should cover reasonably anticipated bank charges.
- ❖ You should contact the bank to determine whether there will be any charges associated with closing the account. If a closing fee will be assessed, deposit sufficient funds in the IOLTA account to cover the closing fee (this is a personal expense to you as the attorney, and you should not use client funds).
- ❖ Prepare and send all final bills to clients to document fees earned.
- ❖ Disburse all funds belonging to you, including earned fees, reimbursement for costs advanced to the client or advanced on the case and deposit the monies in the business operating account.
- ❖ Disburse funds belonging to clients. Send the check to the client with a duplicate copy of their final bill or prepare cover letter transmitting your checks. For unclaimed trust account funds contact the Attorney Discipline Office regarding disposition. Please note that unclaimed funds in a trust account may belong to the client or the attorney, depending on the circumstances. N.H. Rules of Professional Conduct 1.15 (e) & (f)
- ❖ Do not actually close the IOLTA account until all checks have cleared.
- ❖ Destroy (shred) all unused checks and deposit slips once the IOLTA account is closed. This will protect you against potential for fraud and protect you from simply mistakenly using checks and deposit slips from your closed IOLTA account rather than your operating account.
- ❖ Keep your IOLTA check register, client ledgers, bank statements, and other records for a minimum of six (6) years. N.H.S.C. Rule 50 (2)
- ❖ Inform the Attorney Discipline Office (ADO) and the New Hampshire Bar Association (memberrecords@nhbar.org) of your arrangements for storing the IOLTA records for the required six (6) years.
- ❖ While not required, it would be best practice to notify the New Hampshire Bar Foundation that your IOLTA account is closed, since they monitor all IOLTA accounts. If you don't notify the Foundation, your banking institution eventually will, but this facilitates reporting and accounting requirements.

Chapter 5 – Selling Your Practice

As part of the planning process, the future planning attorney should give thought to including instructions for selling his solo or small firm practice. Historically, lawyers were prohibited from selling their practices, including the good name and good will of a lifelong exercise in building value. The rules were concerned that clients were not property to be exchanged or transferred, and that client secrets and confidences would inevitably be lost.

All that changed in 1989 when California issued a new rule of professional conduct allowing the good will aspects of a deceased or disabled lawyer to be sold by the lawyer's estate or personal representative. One year later, in 1990, the ABA adopted a new rule 1.17 into its Model Rules of Professional Conduct broadly allowing sale of all or part of a lawyer's practice. Finally, in 2007, New Hampshire adopted its version of Rule 1.17.

The planning attorney should consider whether he/she desires to have the succession attorney have a right of first refusal to purchase all or some of the planner's practice. Alternatively, the planning attorney can simply provide for the succession lawyer or a broker or other third party to offer the practice for sale.

As can be seen, in the case of a competent attorney closing his/her practice, total retirement is not required, just stopping practice in the area of law being sold in New Hampshire. N.H. Rules of Professional Conduct 1.17(a). Likewise, any sale can include the storage and eventual destruction of the planner's inactive files and records. N.H. Rules of Professional Conduct 1.17(e). The planning attorney has to give written notice of the sale to all present and former clients, and the acquiring lawyer has an affirmative obligation to manage those records the same as his/her own files. The acquiring attorney must publish notice of the transfer in a newspaper, and give written notice of the arrangement to the New Hampshire Bar Association (memberrecords@nhbar.org) N.H. Rules of Professional Conduct 1.17 (c) and (f). The importance of planning an orderly sale is acute in a situation involving death or disability. Having a plan relieves loved ones and heirs of grappling with the sudden loss and trying to figure out if there is residual value other than the furniture. Whether the client information and good will of the practice have value is not an easy question, especially for lay people. Rule 1.17 expressly anticipates that sales may take place due to death and disability and provide for the seller to be a non-lawyer (e.g. a family member). However, it cautions that the sale can only take place if all the mandates of the rule are followed, so all the more important to plan for an orderly and represented procedure N.H. Rules of professional Conduct 1.17 cmt. (13).

Finally, a word of caution. Most solo and small firms are general practitioners, with relatively few institutional clients. One cannot help but wonder how much monetary value adheres to a practice with ever changing clientele, and where its reputation and good will of the exiting planning attorney is what is being sold. While there may not be value in many situations, other examples could readily yield good value such as a large personal injury practice or a specialty practice in which the acquiring lawyer or law firm has similar expertise.

In short, the planning process should analyze this option and include it in the planning directions for the succession attorney, if it makes practical sense.

Chapter 6 – Resources

The following lists of materials from the New Hampshire Bar Association Ethics Committee, relate either directly or indirectly, to the issue of closing your law practice either voluntarily or involuntarily.

Ethics Opinions:

2016-17/01 Law Firm Obligations in Sharing Fees and Ownership Control with Retired Lawyers

A retired lawyer may hold an ownership interest or control in the former lawyer's firm only if the lawyer remains on "active" or "inactive" status in New Hampshire or is admitted to practice in another U.S. jurisdiction (i.e., does not become a "non-lawyer"). A retired lawyer may receive payment from funds originally earned as fees pursuant to a pension/retirement plan to which the fees were deposited as a contribution even if the lawyer has become a "non-lawyer". A retired lawyer may receive fees from cases on which the lawyer worked while active only if (1) the lawyer does not become a "non-lawyer" and (2) the overall fee is reasonable and no larger than the fee earned by the firm if the retired lawyer never retired.

2015-16/05 Client File Retention

Guidance on retaining client files even after retirement, responsibility for the client file continues beyond retirement.

2012-13/04 Use of Cloud Computing in the Practice of Law

Cloud computing may be a resource for storage of old files, especially when the attorney prefers not to store boxes of paper, or pay for the storage of files. If the attorney prefers to scan or keep electronic files, this opinion discusses considerations that an attorney should think about if choosing to put client files in the cloud.

2010/11-01 Collecting Attorney's Fees, Debt Forgiveness and Reporting to Regulating Agency

As attorneys are considering how to best handle delinquent accounts, it is worth noting that the tools and leverage used by collection agencies are not available for attorneys to get paid. Attorneys are not allowed to report to the IRS or to Credit Agencies that debts have been forgiven.

2008-09/01 Drafting Lawyers Acting as Fiduciary for Client

When drafting various estate planning documents, New Hampshire attorneys are frequently requested by their clients to act in one or more fiduciary roles. The drafting attorney may, at the request of the client, be inserted as a fiduciary in the document or documents being drafted by that attorney, provided that: (1) there has been adequate disclosure of information to the client, as required under Rule 1.4; and (2) the attorney makes a determination as to whether the personal interest of the attorney in being a fiduciary would require compliance with Rule 1.7(b) and that the attorney may continue to exercise independent professional judgment in recommending to the client the best choices for fiduciaries under Rule 2.1. In order to document compliance with these Rules, it would be the best practice for the attorney to confirm in writing the "informed consent" of the client to the selection of the drafting attorney as the named fiduciary.

Not only do attorneys need to be aware of the requirements necessary when the attorney is acting as a fiduciary for a Client, but in retirement an Attorney should be mindful of the files in which they

have been asked to serve as a fiduciary, whether or not the attorney is willing to serve as a fiduciary now that they are closing their practice, as well as keeping good records for these cases as the attorney may be called upon after the closing of their practice if they are listed as an appointed fiduciary in any of their client files.

2006-07/02 Identification of Inactive Bar Member Status

An attorney who is admitted to practice law in New Hampshire should consider New Hampshire Rule of Professional Conduct 7.1 before identifying the lawyer on firm letterhead as admitted to the New Hampshire Bar but on inactive status. "Inactive" attorneys should not be listed on letterhead or websites for firms, even with "inactive" next to their names.

2005-06/03 Obligation to Provide Electronic Material

Lawyers are obligated to transfer the client's complete file, including all electronic communications and documents, to successor counsel upon the client's request.

Ethics Corners & Articles:

Ethics Corner Client Communication 12/19/2018

Attorneys need to take reasonable steps and make reasonable accommodations to communicate to the clients about their representation, including when the attorney is going to withdraw from representation, retire or close their practice.

What to Do with Unclaimed Client Funds 12/13/13

A practical article on properly handling Unclaimed Client Funds when you can't find your client.

Lawyers & Cloud Computing: Be Careful Up There 8/23/13

When storing client files electronically, there are Ethical considerations to using the cloud.

Listing 'Skills and Expertise' on LinkedIn 6/21/13

As part of the closing of a practice, an attorney will need to be mindful of updating their status and accurately reporting their services.

Disclosure of Client Information When Lawyers Move between Firms 2/22/13

Whether an attorney is transitioning to a new firm, or closing their practice and transferring the files, similar rules regarding disclosure of information and client confidentiality apply.

Informed Consent 7/13/12

This Article reflects on what is informed consent. When closing a practice, your client should be giving informed consent when it comes to who will be taking on their file.

The Client's File 5/18/12

This article gives a concise explanation of what is included in the client file and what should be transferred to new counsel.

Trust Accounting Pitfalls 4/13/12

A reminder of expectations for an IOLTA account. An attorney's responsibility for their IOLTA account continues until all funds are appropriately transferred and beyond.

Non-Compete Clauses: Safe for Lawyers 11/18/11

While Non-compete Clauses are prohibited, agreements concerning benefits upon retirement are allowed. An attorney should always look at any employment, shareholder or other agreements that may apply to the attorney leaving the firm.

Closing a Solo Practice in New Hampshire 5/17/07

A practical Ethics Article with different resources for checklists and materials from different jurisdictions that may help guide the closing of a practice.

Ethical Considerations and Retention of Client Files 3/18/1999

The obligation to maintain client files is not indefinite.

Chapter 7 – Forms

Caution Regarding Forms

This Planning Guide is designed to assist New Hampshire lawyers in protecting their client's interests, should the lawyer's practice be interrupted. As an aide to that planning, a number of forms are included in the pamphlet. They are provided in Word are downloadable for convenience.

However, caution demands that users of the Planning Guide understand that these are just forms, nothing more, and need to be adopted to each practitioner's particular needs and circumstances. The form documents should mirror the substantive terms of the plan.

Any user of the Planning Guide needs to comply with all laws, statues and applicable court rules, including but not limited to the Rules of Professional Conduct. While every effort has been made to ensure that the information contained in the Planning Guide is accurate and consistent with New Hampshire Laws, if there is any conflict between New Hampshire statues, rules, or case law, the applicable legal authority shall control.

All forms are available online at

www.nhbar.org

AGREEMENT – FULL FORM (Agreement To Close Law Practice)

Sample – Modify as appropriate

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

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

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

If you do not want the Succession Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement. For a discussion of alternatives, see Chapters 2.

AGREEMENT TO CLOSE LAW PRACTICE

Between: _____, hereinafter referred to as "Planning Attorney"

And: _____, hereinafter referred to as "Succession Attorney"

And: _____, hereinafter referred to as "Authorized Signer"

1. Purpose.

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

2. Parties.

The term Succession Attorney refers to the attorney designated above or the Succession Attorney's alternate. The term Planning Attorney refers to the attorney designated above or the Planning Attorney's representatives, heirs, or assigns. The term Authorized Signer refers to the person, other than the succession Attorney, designated to sign on Planning Attorney's trust account and to provide an accounting for the funds belonging to Planning Attorney's clients.

3. Establishing Death, Disability, Impairment, or Incapacity.

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

4. Consent to Close Practice.

Planning Attorney hereby gives consent to Succession Attorney to take all actions necessary to close Planning Attorney's law practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close Planning Attorney's own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Succession Attorney as attorney-in-fact, with full power to do and accomplish all the actions contemplated by this Agreement as fully and as completely as Planning Attorney could do personally if Planning Attorney were able. It is Planning Attorney's specific intent that this appointment of Succession Attorney as attorney-in-fact shall become effective only upon Planning Attorney's death, disability, impairment, or incapacity. The appointment of Succession Attorney shall not be invalidated because of Planning Attorney's death, disability, impairment, or incapacity,

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

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

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

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

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

5. Payment For Services.

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

6. Preserving Attorney Client Privilege.

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

7. Succession Attorney Is Attorney for Planning Attorney.

(Delete one of the following paragraphs as appropriate.)

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

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

OR:

Succession Attorney Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Succession Attorney is not the attorney for Planning Attorney. Succession Attorney has permission to inform the Planning Attorney's professional liability insurance carrier of errors or potential errors of Planning Attorney. Succession Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Succession

Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

8. Authorized Signer Is Not Attorney for Planning Attorney.

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

9. Providing Legal Services.

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

10. Informing New Hampshire Disciplinary Board and Bar Association.

Succession Attorney agrees to inform the New Hampshire Discipline Office and the NHBA, where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. Contacting the Professional Liability Carrier.

Planning Attorney authorizes Succession Attorney to contact the Planning Attorney's professional liability insurance carrier concerning any legal malpractice claims or potential claims. (**Note to Planning Attorney:** Succession Attorney's role in contacting the Malpractice Carrier will be determined by Succession Attorney's arrangement with Planning Attorney. See No. 7 of this Agreement.)

12. Providing Clients with Accounting.

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

13. Succession Attorney's Alternate. *(Delete one of the following paragraphs as appropriate.)* If Succession Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Succession Attorney's alternate (hereinafter "Succession Attorney's Alternate"). Succession Attorney's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Succession Attorney's Alternate shall comply with the terms of this Agreement. Succession Attorney's Alternate consents to this appointment, as shown by the signature of Succession Attorney's Alternate on this Agreement.

OR:

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

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

OR:

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

15. Indemnification.

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

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

16. Option to Purchase Practice.

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

17. Arranging to Sell Practice.

If Succession Attorney opts not to purchase Planning Attorney’s law practice, Succession Attorney will make all reasonable efforts to sell Planning Attorney’s law practice and will pay Planning Attorney or Planning Attorney’s estate all monies received for the law practice, less fees and expenses of the transaction.

18. Fee Disputes to be Arbitrated.

Planning Attorney, Succession Attorney, and Authorized Signer agree that all fee disputes among them will be decided by the New Hampshire Bar Association Dispute Resolution Committee.

19. Termination.

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

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

[Planning Attorney]

[Date]

STATE OF NEW HAMPSHIRE)
) ss.
County of _____)

This instrument was acknowledged before me on _____

_____ (date) by _____ (name(s) of person(s)).

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

[Succession Attorney]

[Date]

STATE OF New Hampshire)
) ss.
County of _____)

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

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

[Succession Attorney's Alternate]

[Date]

STATE OF NEW HAMPSHIRE)
) ss.
County of _____)

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

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

[Authorized Signer]

[Date]

STATE OF New Hampshire)
) ss.
County of _____)

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

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

[Authorized Signer's Alternate]

[Date]

STATE OF NEW HAMPSHIRE)
) ss.
County of _____)

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

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

POWER OF ATTORNEY – LIMITED (Authorized Signer)

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

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

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

[Account Holder]

[Date]

STATE OF NEW HAMPSHIRE)
) ss.
County of _____)

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

NOTARY PUBLIC FOR NEW HAMPSHIRE
My commission expires: _____

LETTER OF UNDERSTANDING

TO: _____ (Succession Attorney)

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

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

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

[Date]

[Planning Attorney]

[Date]

NOTICE OF DESIGNATED SUCCESSION ATTORNEY

I, _____, have authorized the following attorneys to assist with the closure of my practice:

Name of Authorized Succession Attorney: _____

Address: _____

Phone Number: _____

Name of Succession Attorney's Alternate: _____

Address: _____

Phone Number: _____

I, _____, have made arrangements with my financial institution to have an authorized signer on my Lawyer Trust Account:

Name of Authorized Signer on Lawyer Trust Account: _____

(Can be either succession attorney or trusted family friend)

Address: _____

Phone Number: _____

[Planning Attorney]

[Date]

[Succession Attorney]

[Date]

[Alternate Succession Attorney]

[Date]

[Authorized Signer on Lawyer Trust Account]

[Date]

LETTER ADVISING THAT LAWYER IS CLOSING HIS/HER OFFICE

Sample – Modify as appropriate

Re: [Name of Case] _____

Dear [Name]: _____

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

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. In addition, the New Hampshire Bar Association maintains a Lawyer Referral Service (LRS) and can be reached at 603-229-0002.

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

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

I [or insert name of the attorney who will store files] will continue to store my copy of your closed file for 5 years. After that time, I [or insert name of other attorney, if relevant] will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure. [If relevant, add: If you object to (insert name of attorney who will be storing files) storing my copy of your closed file, let me know immediately and I will make alternative arrangements.]

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

Within the next [fill in number] weeks, I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

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

[Name]

[Address]

[Phone]

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

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

Sincerely,

[Attorney] [Firm]

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

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

[Client]

[Date]

Return this authorization to: *[Name]*
[Address] *[Address]*

LAW OFFICE LIST OF CONTACTS AND ASSET LOCATION

ATTORNEY NAME: _____ Social Security #: _____

OR State Bar #: _____ Federal Employer ID #: _____ State Tax ID #: _____

Date of Birth: _____

Office Address: _____

Office Phone: _____

Home Address: _____

Home Phone: _____

SPOUSE/PARTNER:

Name: _____

Work Phone: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

Home Phone: _____

PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, WEBSITES, ONLINE DATA STORAGE, VOICEMAIL, OTHER):

(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box)

Name: _____

Home Address: _____

Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE BOX:

Location: _____

Box No.: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

LEGAL ASSISTANT/SECRETARY:

Name: _____

Home Address: _____

Home Phone: _____

BOOKKEEPER:

Name: _____

Home Address: _____

Home Phone: _____

LANDLORD:

Name: _____

Address: _____

Phone: _____

PERSONAL REPRESENTATIVE:

Name: _____

Address: _____

Phone: _____

ATTORNEY:

Name: _____

Address: _____

Phone: _____

ACCOUNTANT:

Name: _____

Address: _____

Phone: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice: _____

Address: _____

Phone: _____

Second Choice: _____

Address: _____

Phone: _____

Third Choice: _____
Address: _____

Phone: _____

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust
by Contacting: _____
Address: _____

Phone: _____

PROFESSIONAL CORPORATIONS:

Corporate Name: _____
Date Incorporated: _____
Location of Corporate
Minute Book: _____
Location of Corporate
Seal: _____
Location of Corporate
Stock Certificate: _____
Location of Corporate
Tax Returns: _____
Fiscal Year-End
Date: _____
Corporate Attorney: _____
Address: _____

Phone: _____

PROCESS SERVICE COMPANY:

Name: _____
Address: _____

Phone: _____
Contact: _____

OFFICE-SHARER OR OF COUNSEL:

Name: _____
Address: _____

Phone: _____

Name: _____
Address: _____

Phone: _____

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

Name: _____
Address: _____

Phone: _____
Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LEGAL MALPRACTICE – PRIMARY COVERAGE:

Provider: _____
Address: _____
Phone: _____

LEGAL MALPRACTICE – EXCESS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

HEALTH INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Persons Covered: _____
Contact Person: _____

DISABILITY INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LIFE INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

CLOUD or INTERNET-BASED STORAGE LOCATION:

Cloud Provider: _____ Account No.: _____
Address: _____

Phone: _____
Location of Password (if not included on page one): _____
Cloud Provider: _____ Account No.: _____
Address: _____

Phone: _____
Location of Password (if not included on page one): _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

STORAGE LOCKER LOCATION:

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

SAFE DEPOSIT BOXES: (Continued)

Institution: _____

Box No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

Items Stored: _____

Institution: _____

Box No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

Items Stored: _____

LEASES:

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

LAWYER TRUST ACCOUNT:

IOLTA: _____

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT:

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT:

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

Institution: Address:

Phone:

Account No.:

Other Signatory:

Address:

Phone:

MAINTENANCE CONTRACTS:

Item Covered:

Vendor:

Address:

Phone:

Expiration:

Item Covered:

Vendor:

Address:

Phone:

Expiration:

Item Covered:

Vendor:

Address:

Phone:

Expiration:

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES:

State of: _____

Bar Address: _____

Phone: _____

Bar ID _____

No.: _____

State of: _____

Bar Address: _____

Phone: _____

Bar ID _____

No.: _____

State of: _____

Bar Address: _____

Phone: _____

Bar ID _____

No.: _____

Retainer Agreement

(Sample-Modify as appropriate)

THIS RETAINER AGREEMENT (“Agreement”) is made this _____ day of _____,

Between [*Name of Client*], hereinafter referred to as ‘Client,’ and [*Name of Attorney(s)*], Attorney at Law, hereinafter referred to as “Attorney”:

1. Client agrees to employ Attorney for representation in a legal matter in connection with [describe].
2. Attorney has consented to accept such employment and agrees to render the services required of [him/her] as Attorney by this Agreement on the terms and conditions herein stated. Client agrees to cooperate fully with Attorney and others working on Client’s case by keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments. Client also agrees to keep Attorney informed of any change of address or telephone number within five (5) days of the change.
3. The fee for legal services on behalf of Client shall be Client’s sole responsibility and shall be billed at the rate [dollar amount] per hour, plus any expenses and costs incurred on Client’s behalf.
4. Client will deposit with Attorney the sum of [dollar amount] to be held by Attorney in [his/her] trust account. Attorney will not commence representation of Client until such funds are received. Attorney will provide Client with a monthly statement of fees, costs, and expenses. Upon mailing the monthly statement to Client, Attorney will apply the retainer to fees earned, costs, and expenses incurred on Client’s behalf. Client is responsible for paying all fees, costs and expenses in excess of the retainer held in trust.
5. Attorney reserves the right to withdraw from further representation of Client at any time on reasonable written notice to Client at Client’s last known mailing address. If Attorney withdraws, Attorney shall refund to Client any part of the retainer that Attorney has not earned.
6. **Attorney may appoint another attorney to assist with the closure of Attorney’s law office in the event of Attorney’s death, disability, impairment, or incapacity. In such event, Client agrees that the succession attorney can review Client’s file to protect Client’s rights and can assist with the closure of Attorney’s law office. Ultimately, the client can decide to retain this succession attorney, or retain any other licensed attorney, and the succession attorney will facilitate the transfer of the file.**
7. The Attorney may maintain an electronic copy of some or all of the Client’s file in lieu of maintaining a paper copy of the file. Seven years after the conclusion of this matter, Attorney is authorized to destroy some or all of the Client’s file. The Client is entitled to a copy of the Client’s file at any time prior to the destruction of the file. The Client agrees to pay a copying fee of \$0.10

per page of paper copies. There is no charge to provide a copy of the portion of the file stored electronically.

Client acknowledges reading a copy of this Agreement and consents to its terms.

[Attorney]

[Date]

[Attorney]

[Date]

[NOTE: This is a sample form only. Use of this agreement will help establish clear expectations and avoid misunderstandings between you and you client. It will not, however, provide absolute protection against a malpractice ac

LETTER FROM FIRM OFFERING TO CONTINUE REPRESENTATION

Sample – Modify as appropriate

Re: [Name of Case]: _____

Dear [Name]: _____

Due to ill health/death, [Affected Attorney] is no longer able to continue representing you on your case(s). A member of this firm, [Name] previously has been appointed as Succession Attorney by Affected Attorney to assist in winding down his/her practice. We are available to continue handling your case if you wish [me/us] to do so. You have the right to select the attorney of your choice to represent you in this matter.

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

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

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

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

Sincerely,

[Succession Attorney]

Enclosures

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

[Client] [Date]