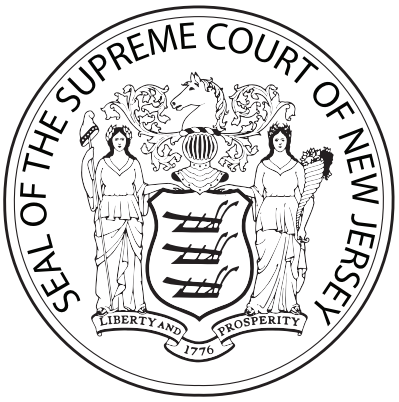

Closing or Assuming Temporary Control of Another Attorney's Law Practice:

2024 Manual for New Jersey Attorney-Trustees

Office of Attorney Ethics

Johanna Barba Jones, Director

Jason D. Saunders, First Assistant Ethics Counsel

Ryan J. Moriarty, Statewide Ethics Coordinator

Hillary Horton, Deputy Ethics Counsel

OFFICE OF ATTORNEY ETHICS
840 BEAR TAVERN ROAD
EWING, NJ 08628
(609) 403-7800

MAILING ADDRESS:
P.O. BOX 963
TRENTON, NJ 08625

ACKNOWLEDGMENTS

The Office of Attorney Ethics ("OAE") gratefully acknowledges the advice and insight of those who contributed to the production of the first edition of this manual:

Robert A. Baxter, Esq.

Donald A. DiGioia, Esq.

Jonathan I. Epstein, Esq.

Darren M. Gelber, Esq.

Diane Hoagland, Esq.

Mary Beth Kramer, Esq.

Donald M. Lomurro, Esq.

Mark Salah Morgan, Esq.

Kevin J. Musiakiewicz, Esq.

Arthur F. Risden, Esq.

Jane E. Salomon, Esq.

Peter R. Strohm, Esq. (1946-2016)

The second edition authors also wish to express appreciation to OAE staff members Barbara Cristofaro and Jennifer Asselta-Woods for support throughout production.

This manual has been patterned after the "Handbook for Receiver of Law Practice of a Disabled or Missing or Deceased ("DMD") Maine Attorney" published by the Maine Board of Bar Overseers, and sections or portions thereof have been included in this manual and reprinted with permission of the Maine Board of Bar Overseers.

TABLE OF CONTENTS

A. Introduction (Pg. 8)

B. Appointment of Attorney-Trustee (Pg. 8)

1. Regular Attorney-Trustee
2. Temporary Attorney-Trustee

C. Petition for Appointment of Attorney-Trustee (Pg. 9)

1. Interested Party
2. Filing the Petition for Attorney-Trustee
3. Qualification to Serve as Attorney-Trustee
4. Order Appointing Attorney-Trustee

D. Purposes of Appointment of Regular Attorney-Trustee (Pg. 11)

1. Regular Attorney-Trustee
2. Primary Responsibility of an Attorney-Trustee
3. Preliminary Steps
4. Inventory Active Files and Make Reasonable Efforts to Distribute Them to Clients
5. Take Possession of Attorney Trust and Business Account
6. Distribute Identified Trust Funds to Clients or Other Parties (other than the attorney)
7. Dispose of Remaining Funds and Assets
8. Reports to the Assignment Judge

E. Purposes of Temporary Attorney-Trustee (Pg. 18)

F. Immunity for Action as Attorney-Trustee (Pg. 19)

G. Legal Fees, Costs and Expenses (Pg. 19)

1. Legal Responsibility of Attorney
2. Office of Attorney Ethics
3. Exemption from Other *Pro Bono* Service

H. Preservation of Files and Records (Pg. 20)

1. Tax Documents
2. Attorney's Bookkeeping Records
3. Client Files

I. Gross Neglect/Malpractice Issues (Pg. 21)

J. Malpractice Insurance (Pg. 21)

K. Miscellaneous Receivership Provisions (Pg. 21)

L. Conclusion (Pg. 22)

Appendix A – Sample Forms

Appendix B – New Jersey Court Rules

Appendix C – Rules of Professional Conduct

Appendix D – Advisory Committee on Professional Ethics Opinions

Appendix E – Random Audit Program Outline of Recordkeeping Requirements Under RPC 1.15 and R. 1:21-6.

Closing or Assuming Temporary Control of Another Attorney's Law Practice:

Manual for New Jersey Attorney-Trustees

A. Introduction

This manual is designed to assist attorneys who have been appointed as attorney-trustees for the law practices of New Jersey attorneys who have been suspended, disbarred, transferred to disability-inactive status, abandoned the practice of law, cannot be located, or have died. This manual also provides guidance to attorney-trustees appointed on a temporary basis to preserve the practice of attorneys who are unable to carry on their practices temporarily.

Every situation is different, and no manual can cover every issue that may arise. This manual addresses only the basic responsibilities to be performed by attorney-trustees that will assist in the smooth and efficient closing down or temporary control of a law practice.

B. Appointment of Attorney-Trustee

1. Regular Attorney-Trustee

   Rule 1:20-19(a)(1) provides for the appointment of an attorney-trustee to handle the affairs of a New Jersey attorney who has died, been suspended, disbarred, been transferred to disability-inactive status, abandoned the practice of law, or cannot be located, and has no partner, executor, administrator, or other person capable of conducting the attorney's affairs.

   a. Death

      Proof of an attorney's death sufficient to justify the appointment of an attorney-trustee may be established by a certified death certificate, obituary, or other reliable evidence.

   b. Transfer to Disability-Inactive Status

      An attorney will be transferred to "disability-inactive status" by the New Jersey Supreme Court whenever the attorney "has been judicially declared mentally incapacitated or involuntarily committed to a mental hospital," R. 1:20-12(a), or when "the attorney lacks the capacity to practice law," R. 1:20-12(d).

   c. Abandonment of Practice of Law

      An attorney is considered to have abandoned the practice of law when the attorney has ceased the practice of law or abandoned its duties without sign of intention to return to practice.

   d. Missing/Disappeared

      An attorney is considered to be missing if their whereabouts, or status as alive or dead cannot be confirmed and their location and fate are unknown.

2. Temporary Attorney-Trustee

A temporary attorney-trustee may be appointed "[w]hen, in the opinion of the Assignment Judge, an attorney is otherwise unable to carry on the attorney's practice temporarily so that clients' matters are at risk." R. 1:20-19(a)(2). The Assignment Judge may "appoint a temporary attorney-trustee for a period of up to six months." R. 1:20-19(a)(2).

a. "Unable to Carry on the Attorney's Practice Temporarily"

The decision of whether an attorney is unable to carry on his or her practice temporarily is entirely in the discretion of the Assignment Judge based on whatever proofs are presented in support of the Petition for the Appointment of a Temporary Attorney-Trustee. These may include affidavits and/or medical records.

b. Vacating Temporary Trusteeship

"The attorney whose practice is subjected to a temporary trusteeship shall have the right to make application at any time for an order vacating the temporary trusteeship on notice to all interested parties." R. 1:20-19(a)(2).

C. Petition for Appointment of Attorney-Trustee

1. Interested Party

The petition for the appointment of an attorney-trustee may be made by "any interested party." R. 1:20-19(a)(1). However, interested party is not defined in the Rules. However, these petitions are usually made by the executor of the estate of a deceased attorney, a representative of the County Bar Association in the county where the deceased, disabled, suspended, disbarred, or missing attorney practiced law, and the Office of Attorney Ethics.

A sample letter to the County Bar Association advising of the need for the appointment of an attorney-trustee and outlining the responsibilities and duties of the attorney-trustee is included in ***Appendix A.***

2. Filing the Petition for Attorney-Trustee

a. Assignment Judge

The petition for the appointment of an attorney-trustee shall be made to the Assignment Judge in the vicinage in which the attorney maintained a practice. R. 1:20-19(a)(1).

b. Grounds Necessitating the Appointment of an Attorney-Trustee

The petition should state the grounds necessitating the appointment of an attorney-trustee (i.e., death, disability, suspension or disbarment, abandonment, or disappearance of attorney).

c. Name of Proposed Attorney-Trustee(s)

The petition should identify the attorney who is willing and able to serve as attorney-trustee, as well as any relevant facts supporting the attorney's appointment as attorney-trustee.

d. Request for Appointment of Attorney-Trustee

The petition should request the appointment of an attorney-trustee to inventory the client files, take possession of trust and business accounts, and take other necessary action to protect the interests of clients.

e. Notice of Petition for Appointment of Attorney-Trustee

i. To Suspended, Disbarred, or Disabled Attorney

The suspended, disbarred or disabled attorney for whom an attorney-trustee is necessary should be served with notice of the petition for appointment of an attorney-trustee.

ii. To Missing Attorney

Notice to an attorney who cannot be located should be given by publication.

iii. Deceased Attorney

In the case of a deceased attorney, notice of the petition for appointment of an attorney-trustee should be given to the personal representative of the estate of the deceased attorney.

iv. Office of Attorney Ethics

Although the Office of Attorney Ethics is not required under the Rules to be served with notice of a petition for the appointment of an attorney trustee, the OAE would appreciate being provided with a copy of the petition.

A sample Petition for Appointment of Regular Attorney-Trustee and Certification in Support of the Petition are included in ***Appendix A****.*

3. Qualification to Serve as Attorney-Trustee

R. 1:20-19(a)(1) provides that any member of the bar of the vicinage where the attorney's law practice is situated may be appointed as attorney-trustee. The Rule further provides that "[w]here a responsible party capable of conducting respondent's affairs is known to exist, and where that person is a New Jersey attorney or has retained a New Jersey attorney, that attorney may be appointed and directed to take appropriate action." Id.

a. Number of Attorney-Trustees Appointed

There are times when more than one attorney-trustee may be appointed by the Assignment Judge. For example, where the volume of the work to be performed is more than one attorney-trustee can reasonably handle, a second, or even a third, attorney-trustee may be appointed to share the workload. Also, where the principal attorney-trustee is not familiar with the area of law practiced by the attorney, another attorney-trustee with expertise in that area of law may be appointed as a secondary attorney-trustee.

b. Estate Attorney as Attorney-Trustee

An attorney for the estate of a deceased attorney may be appointed to serve as the attorney-trustee. However, there is a potential for a conflict of interest in the event the interests of the estate, its executor and heirs conflict with those of the deceased attorney's clients.

c. Spouse as Attorney-Trustee

Similarly, the surviving spouse of a deceased attorney, if also an attorney, may serve as attorney-trustee, but must be sensitive to potential conflict of interest issues.

4. Order Appointing Attorney-Trustee

The Order appointing an Attorney-Trustee should provide the attorney-trustee with a broad range of authority, including the authority to enter the attorney's office; review, inventory, and copy client files; distribute client files; take possession of the attorney trust and business accounts; distribute identified trust funds to clients or other parties; and dispose of any remaining assets as directed by further order of the court. See Rule 1:20-19(b).

Sample Orders Appointing Attorney-Trustee are included in ***Appendix A****.*

a. Notice of Order Appointing Attorney-Trustee

i. To Office of Attorney Ethics, District Ethics and Fee Committees, and County Bar Association

R. 1:20-19(a)(1) requires that notice of an order of appointment of an attorney-trustee be given to the Director of the Office of Attorney Ethics and the secretaries of the appropriate Ethics Committee and Fee Committee and county bar association in the vicinage where the law practice is situated.

A sample Notice of Appointment to Office of Attorney Ethics is included in ***Appendix A****.*

ii. To Suspended, Disbarred, Disabled, or Missing Attorney.

The Rule does not direct the service of an order of appointment on the suspended, disbarred, disabled or missing attorney. However, it is recommended that the attorney-trustee send a copy to the affected attorney.

A sample Notice of Appointment to Attorney is included in ***Appendix A****.*

iii. To Personal Representative of Estate of Deceased Attorney

Nor does the Rule require that notice of an order of appointment be given to the personal representative of the estate of a deceased attorney. Nevertheless, notice should be given to the personal representative inasmuch as the estate may be liable to the attorney-trustee for reasonable attorney's fees and expenses incurred by the attorney-trustee for costs. (See Section G, Legal Fees, Costs and Expenses).

A sample Notice of Appointment to Personal Representative in included in ***Appendix A****.*

D. Purposes of Regular Attorney-Trustee

1. Regular Attorney-Trustee

The purposes of the appointment of a regular attorney-trustee are outlined in subsection (b) of R. 1:20-19. They are:

(1) to inventory active files and make reasonable efforts to distribute them to clients,

(2) to take possession of the attorney trust and business accounts,

(3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and

(4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court.

2. Primary Responsibility of an Attorney-Trustee

"The attorney-trustee shall have no obligation or liability to the attorney." R. 1:20-19(b). According to the 1995 Committee Comment to R. 1:20-19, "the primary responsibility of an attorney-trustee is to clients and not to the attorney."

3. Preliminary Steps

There are a number of preliminary steps that must be taken by the attorney-trustee before beginning the process of inventorying client files. They include:

a. Getting Access to Law Office

Once an order of appointment has been entered, the attorney-trustee should gain access to the attorney law office as soon as possible. Employees or relatives of the attorney, or the personal representative of a deceased attorney's estate, can usually provide the attorney-trustee with keys and access to the law office. If these individuals cannot facilitate access to the law office, the attorney-trustee may have to contact the landlord for assistance in getting into the law office.

b. Checking Calendar and/or Lawyers Diary

Once the attorney-trustee has gained access to the law office, they should check the attorney's calendar, Lawyers Diary and any computer calendaring program, such as Microsoft Outlook, to determine which cases are scheduled for court appearances, depositions, hearings, trials, etc.

c. Clerk of the Superior Court

In addition to checking the calendar and/or Lawyers Diary, the attorney-trustee should contact the Clerk of the Superior Court who can provide the attorney-trustee with a printout of court dates where the attorney is scheduled to appear. The phone number for the Superior Court Clerk's Office is (609) 421-6100.

d. Contacting Clients

After determining which cases are scheduled for imminent hearings, court appearances, or discovery, the attorney-trustee should immediately contact the clients to obtain their permission to postpone or reschedule those events until they can secure substitute counsel.

e. Contacting Courts and Opposing Counsel

The attorney-trustee should also contact courts and opposing counsel about files that require immediate discovery or court appearances to reschedule hearings or obtain extensions where necessary. Extensions and rescheduling should be confirmed in writing.

f. Opening and Reviewing Mail

Next, the attorney-trustee should open and review regular mail and e-mails.

g. Forwarding Phone Calls

If there is no receptionist or secretary available to answer the attorney's phone, the attorney-trustee should arrange to have the attorney's calls forwarded to the law office of the attorney-trustee.

h. Looking for Office Procedures Manual

The attorney-trustee should look for an office procedures manual and determine if there is a way to get a list of clients with active files.

4. Inventory Active Files and Make Reasonable Efforts to Distribute Them to Clients

a. Secure and Review Client Files

Once these preliminary steps have been completed, the attorney-trustee's next priority is to secure all client files. If client files are stored online, the attorney-trustee should locate the username and password and retrieve the digital files.

Each file must be reviewed to determine which are active and which are closed. In its final form, the final client file inventory should detail which files have been claimed and returned and which files contain documents of intrinsic value. The client file inventory will ultimately be attached to the final report to be filed with the Assignment Judge when filing the petition for discharge as attorney-trustee.

A list of all files should be included in a client file inventory, a sample of which can be found in ***Appendix A***.

i. Prioritize all active files

Active files should be prioritized to ensure that they are being timely addressed.

ii. Statutes of Limitations

During review of the files, attention should be paid for the statute of limitations of the pending matters to ensure that they are met to the extent possible.

b. Contacting / Notifying Clients

i. Active Files

A letter should be sent to each client with an active file notifying the client of the inability of the attorney to continue to handle the client's matter. The client should be advised to retain another attorney as soon as possible and to either pick up their file at a certain location or authorize the release of the file directly to the client's new attorney.

A sample letter advising the client that the client's lawyer is unable to continue to practice is included in ***Appendix A***.

ii. Closed Files

Letters should also be sent to clients with files that have been closed for seven (7) years or less requesting that they pick up their files.

Closed files older than seven (7) years can be destroyed without notice to the clients. However, prior to destroying these old, closed files, they should be reviewed to determine whether the files contain documents of intrinsic value such as original wills, agreements, etc. These documents should be removed from the closed file and not destroyed.

iii. Diary & Follow Up

The attorney-trustee should utilize a diary system to track notices to clients and their responses.

c. Notify Tribunals and Opposing Parties/Counsel in All Pending Litigation

The attorney-trustee should also provide notice of the death, disability, suspension, disbarment, abandonment, or disappearance of the attorney to the court and opposing counsel in all pending matters so that scheduled court appearances and depositions can be adjourned until the client obtains successor counsel.

A sample letter advising adversary that lawyer is unable to continue to practice is included in ***Appendix A***.

d. Place Newspaper Advertisement

The attorney-trustee should place an advertisement in a local and/or regional newspaper advising all present and former clients that the law practice of the attorney is being closed. The advertisement should explain when, where and how the attorney's clients can retrieve their files.

The attorney-trustee can also place a notification on the affected attorney's website, if applicable, advising the clients to contact the attorney-trustee for more information.

e. Distribution of Files to Clients

i. Return File as Found

The attorney-trustee may return the file to the client in the same condition as it was found in the affected attorney's office. Alternatively, the attorney-trustee may return a copy of the file to the client and retain the original file as protection for the affected attorney against a potential malpractice suit, ethical or tax inquiry. See ACPE Opinion No. 554, 115 N.J.L.J. 565 (May 16, 1985).

ii. Cull File and Return Originals/Legal Documents/Other Instruments Requested by Client

If the file contains original, legally operative documents, such as contracts, deeds, or wills, the attorney-trustee should return the original documents to the client. The attorney-trustee may keep a copy of the original document. See ACPE Opinion No. 554, 115 N.J.L.J. 565 (May 16, 1985) and In re Borden, 121 N.J. 520, 524 (1990).

iii. No Withholding of Client Files

The attorney-trustee may not withhold a client's file pending payment of any fees due to the deceased, disabled, suspended, disbarred, or missing attorney. See ACPE Opinion No. 554, 115 N.J.L.J. 565 (May 16, 1985) and RPC 1.16(d) "No lawyer shall assert a common law retaining lien."

iv. Obtain Receipt and Release for Distributed Files

When clients pick up their files, the attorney-trustee should ask each client to sign a receipt and release, indicating that the file has been received. The attorney-trustee should require clients to produce appropriate identification before releasing file materials and absent contrary, written instructions from the client, the file materials should not be released to anyone other than the client. It helps to inform clients in the initial notification letter how the files will be returned and the reason for the security measures. The signed receipts will guard against clients later claiming that they did not receive their files.

A sample Receipt and Release for Client Files in included in ***Appendix A****.*

v. Release of File to Successor Counsel

If, instead of picking up the file, the client wants the file transferred directly to successor counsel, the attorney-trustee should have the client sign an authorization to release the file to successor counsel. The attorney-trustee should confirm that a Substitution of Attorney has been filed.

A sample Authorization for Transfer of Client File is included in ***Appendix A****.*

vi. Unclaimed Files

Despite all reasonable efforts to distribute files to clients, the attorney-trustee will inevitably end up with a number of unclaimed files. The attorney-trustee will either have to make arrangements to store these files or seek court permission to have them destroyed.

f. Acceptance of Clients / Referral to Other Attorneys

R. 1:20-19(f) states "[w]ith the consent of any client, that attorney-trustee may, but need not, accept employment to complete any legal matter."[1]

i. No Solicitation of Clients

However, the attorney-trustee may not solicit the client and, prior to assuming representation of the client, the attorney-trustee should inform the client in writing that the client is free to employ an attorney of the client's choosing, and that the court's appointment of an attorney-trustee in no way mandates that the client employ the attorney-trustee.

ii. Conflict of Interest

The attorney-trustee should check for conflicts of interest prior to undertaking the client's legal representation.

[2]While a regular attorney-trustee may accept employment to complete a matter, a temporary attorney-trustee may not. R. 1:20-19(a)(2).

iii. Substitution of Attorney / Retainer Agreement

Any attorney-trustee agreeing to accept employment to complete a legal matter should prepare and file a Substitution of Attorney and comply with applicable Rules of Professional Conduct and New Jersey Court Rules regarding written retainer agreements.

iv. Referral of Client to Another Attorney

An attorney-trustee may refer the client to another attorney provided the client requests a referral. However, the attorney-trustee may only collect a referral fee on behalf of the affected attorney when the attorney receiving the referral is a certified trial attorney.[2]

g. Protection of Client Information

R. 1:20-19(c) provides that "[a]ny attorney-trustee shall not disclose any information contained in any files . . . without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment or to comply with any request from an Ethics Committee or the Director [of the Office of Attorney Ethics]."

5. Take Possession of Attorney Trust and Business Accounts

Equally as important as inventorying client files and distributing them to clients is taking possession of the attorney's trust and business accounts. The attorney-trustee should locate and gather all attorney trust and business account records as soon as possible.

A copy of the Random Audit Compliance Program Outline of Recordkeeping Requirements Under RPC 1.15 and R. 1:21-6 is included in ***Appendix E****.*

a. Attorney Trust Account(s)

Once all attorney trust account records have been gathered, the attorney-trustee should review the records, perform three-way reconciliations of the attorney trust account, and bring individual client ledgers up to date. This will assist the attorney-trustee in determining ownership of the funds.

b. Attorney Business/Operating Account

An attorney-trustee is also authorized to take possession of the attorney's business account and use the funds to pay employees assisting the attorney-trustee in closing the law practice and to pay certain administrative and overhead expenses.

c. Fees

i. Undeposited Checks

The attorney-trustee should look around the office for checks or funds that have not been deposited and determine whether the funds should be deposited or returned to clients.

ii. Final Billing Statements

The attorney-trustee should prepare a final billing statement for each client matter showing any outstanding fees due and/or money in trust.

d. Fees for Legal Services Performed / Accounts Receivable

[2]See R. 1:39-6(d): "A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate."

If fees for legal services performed are owed to the affected attorney, the attorney-trustee should send a bill and request for payment to the client. All fees for legal services due to a deceased, disabled, suspended, disbarred, or missing attorney for whom an attorney-trustee has been appointed shall be paid solely to the attorney-trustee, R. 1:20-20(b)(13), and should be deposited in the attorney's business/operating account, see R. 1:21-6(a)(2). Those fees may not be remitted to the affected attorney, or to the estate of a deceased attorney absent an order from the court but are to be used solely to pay reasonable fees, costs and expenses of the trusteeship as ordered by the court. R. 1:20-19(b).

e. Unearned Retainer Fees

All unearned retainer fees should be returned to the client.

6. Distribute Identified Trust Funds to Clients or Other Parties (other than the attorney)

After the attorney-trustee has determined the ownership of the funds in the attorney trust account, the attorney-trustee should file a petition, requesting the court to authorize the attorney-trustee to distribute identified trust funds to clients or other parties. For the protection of the attorney-trustee, court approval should be obtained prior to making any distributions from the trust account.

A sample Petition for Order to Distribute Identified Trust Funds to Clients or Other Parties is included in ***Appendix A***.

a. Insufficient Funds in Attorney Trust Account

If, for any reason, there is not enough on deposit in the trust account to pay all claims, the attorney-trustee should attempt to formulate a plan as part of the petition to the court for approval. In these cases, clients who have a claim against funds in the attorney trust account should be given notice and opportunity to be heard on the petition to adopt the attorney-trustee's attorney trust account disbursement plan.

b. Unidentified Trust Funds – Superior Court Trust Fund

Unidentified trust funds should be transferred to the Superior Court Trust Fund pursuant to R. 1:21-6(j).

7. Dispose of Remaining Funds and Assets

a. Furnishings

Arrange for disposition of office furnishings. If not saleable, furnishings in good condition may be donated to a charitable organization.

b. Books

Arrange for disposition of books. Law and other reference books that have not been kept up to date have little to no value. Most libraries and law schools have limited space and are usually not interested in accepting books. Many charitable organizations likewise do not accept legal, text, or reference books. The local bar association may be able to post notice that books are available.

If possible, check whether there are deposits/credits with book companies. Arrange for refund. Notify book companies to cancel future deliveries. The Post Office will not accept packages for return if they have been opened.

c. Equipment

Check whether any office equipment, such as copiers and computers, is leased. If so, notify lessors of the attorney's death, disability, suspension, disbarment, or disappearance and arrange to have the equipment returned.

Prior to returning leased office equipment or disposing of owned office equipment, the attorney-trustee should transfer the electronic records from the office equipment to a durable storage media. The attorney-trustee must make sure that all office equipment has been wiped clean of confidential information. See RPC 1.16(f)

8. Reports to the Assignment Judge

a. Initial Report of Attorney-Trustee

Within 120 days of the order of appointment, the attorney-trustee "shall file an initial report with the Assignment Judge." This report "shall describe the nature and scope of the work accomplished and to be accomplished . . . and the significant activities of the attorney-trustee in meeting the obligations under [R. 1:20-19]." The initial report should specify what efforts have been undertaken to inventory and distribute client files, secure trust funds and distribute them to identified clients and other parties, and dispose of remaining assets. In certain cases, the Assignment Judge may require the filing of additional interim reports. *A sample Initial Report is included in **Appendix A**.*

b. Initial Report of Temporary Attorney-Trustee

The initial report of the temporary attorney-trustee shall be filed with the Assignment Judge 150 days after appointment. In addition to describing the nature and scope of the work accomplished by the temporary attorney-trustee, the report filed by the temporary attorney-trustee shall discuss the attorney's condition and ability to resume the practice. "The Assignment Judge may then either dissolve the temporary attorney-trusteeship or convert it to a regular attorney-trusteeship." R. 1:20-19(a)(2).

c. Final Report

Prior to being discharged, the attorney-trustee shall file a final report with the Assignment Judge that, like the initial report, describes the nature and scope of the work accomplished by the attorney-trustee, but also "include[s] accountings for any trust and business accounts, the disposition of active case files and any requests for disposition of remaining files and property." R. 1:20-19(d).

*A sample Final Report is included in **Appendix A**.*

d. Petition for Order Discharging Attorney-Trustee

The final report should be attached to the Petition for Order Discharging Attorney-Trustee.

*A sample Petition for Order Discharging Attorney-Trustee is included in **Appendix A**.*

E. Purposes for Temporary Attorney-Trustee

"The purposes of the temporary attorney-trustee shall be to preserve in so far as practical, the practice of the attorney and all attorney-client relationships pending a report to the Assignment Judge . . . as to the attorney's condition and ability to resume the practice." R. 1:20-19(a)(2).

F. Immunity for Action as Attorney-Trustee

The Rules provide the attorney-trustee with immunity from suit, whether legal or equitable. See R. 1:20-19(e) and R. 1:20-7(e). However, there is no immunity if the attorney-trustee accepts representation. See R. 1:20-19(f).

G. Legal Fees, Costs and Expenses

1. Legal Responsibility of Attorney

The attorney for whom an attorney-trustee has been appointed is responsible to the attorney-trustee for "all fees, costs, and expenses reasonably incurred by the attorney-trustee." R. 1:20-19(g). If the attorney is deceased, the estate of the attorney is responsible for these expenses. Therefore, the attorney-trustee should keep track of both his or her own time and time spent by clerical staff. Any expenses incurred in closing down the attorney's practice should also be recorded.

a. Application for Costs and Legal Fees

In order to receive reimbursement "for (1) actual expenses incurred by the attorney\ trustee for costs, including, but not limited to, reasonable secretarial, paralegal, legal, accounting, telephone, postage, moving and storage expenses, and (2) reasonable hourly attorneys' fees[,]" the attorney-trustee must apply to the Assignment Judge by affidavit with a full accounting. R. 1:20-19(h). Notice of the application for reimbursement must be given to the suspended, disbarred, or disabled attorney, or their personal representative or heirs if the attorney is deceased. R. 1:20-19(h).

It is expressly prohibited for an attorney-trustee to apply for the payment of fees with unidentified funds and that those funds should be either returned to a client, if known, or deposited with the Superior Court Trust Fund Unit pursuant to R. 1:21-6(j).

b. Interim Application for Costs and Legal Fees

"For good cause shown, an interim application for costs and legal fees may be made," R. 1:20-19(h) but note that a "temporary attorney-trustee shall not apply for legal fees within the first thirty days after appointment."

c. Priority

Any judgment entered in favor of the attorney-trustee for attorney's fees, costs and expenses will be "accorded a priority" over other expenses. R. 1:20-19(h).

2. Office of Attorney Ethics

The Office of Attorney Ethics is not responsible to the attorney-trustee for any fees, costs and expenses reasonably incurred by the attorney-trustee, even if the appointment of the attorney-trustee was due to the suspension or disbarment of the affected attorney. However, if approved by the Disciplinary Oversight Committee, the Office of Attorney Ethics can provide limited reimbursement (up to $3,000) for some out-of-pocket expenses incurred by the attorney-trustee.

3. Exemption from Other Pro Bono Service

The New Jersey Supreme Court has determined that any attorney-trustee who certifies that they have performed at least 25 hours of pro bono services as attorney-trustee shall be exempt from other *pro bono* assignments for that year. The exemption claim is to be made to the Assignment Judge.

H. Preservation of Files and Records

1. Tax Documents

The Internal Revenue Service (IRS) can audit for three years after a return is filed even if filed late. All attorney tax returns should be kept **at least** three years after the affected attorney filed and/or paid the tax, whichever is later.

All records pertaining to an Employer-Employee plan showing deposits and/or withdrawals should be kept for **at least** three years. All Form 5500's filed with the IRS should also be preserved for **at least** three years.

The IRS website (www.irs.gov) is a useful resource for specific information.

2. Attorney's Bookkeeping Records

An attorney-trustee has the same obligation as the attorney to maintain bookkeeping records in current status and to retain them for seven years after the event that they record. See R. 1:21-6(c). Specifically, the attorney-trustee must maintain and retain:

a. Appropriate receipts and disbursement journals containing a record of all deposits in and withdrawals from the attorney trust and business accounts, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact, and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers or by check payable to a named payee and not to cash.

b. An appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed.

c. Copies of all retainer and compensation agreements with clients.

d. Copies of all statements to clients showing the disbursement of funds to them or on heir behalf.

e. Copies of all bills rendered to clients.

f. Copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed.

g. Originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips.

h. Copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances.

3. Client Files

a. Retention of Client Files

As a general rule, client files must be maintained for a period of seven years following the final disposition of a matter.

b. Destruction of Client Files

Clients can provide express consent to file destruction at an earlier time. However, certain items may be classified as "property of the client," not subject to destruction after seven years. Examples include but are not limited to original wills, trusts, deeds, executed contracts, and cooperate bylaws and minutes.

c. Criminal Files

Criminal files are generally held for as long as the client is alive absent express client consent to an earlier destruction date. See ACPE Opinion No. 692, 170 N.J.L.J. 343 (October 28, 2002).

d. Minors

Files for minors must be kept until the minor reaches majority and thereafter until the statute of limitations runs. See ACPE Opinion No. 692, 170 N.J.L.J. 343 (October 28, 2002).

I. Gross Neglect/Legal Malpractice Issues

If the attorney-trustee finds matters that have been neglected or may be barred by a statute of limitations, the attorney-trustee should notify the client of the problem and inform the client that he/she should consult with an attorney of their choosing right away.
Attorney-trustee should also notify the affected attorney's malpractice carrier of possible suit.

J. Malpractice Insurance

If the deceased, disabled, suspended or disbarred attorney had malpractice insurance, the attorney-trustee should review the policy to ascertain whether the attorney is entitled to a free extended reporting period or, in the alternative, the cost of purchasing an extended reporting period.
Some malpractice insurance policies may cover the attorney-trustee.

K. Miscellaneous Receivership Provisions

While this guide is intended to assist you in your duties as attorney-trustee, it is worth noting that R. 1:20-19 is not the only Rule adopted by the Supreme Court to protect the bench, bar, and public.
A lesser known provision for preserving assets and protecting files is R. 1:28-8. Custodial Receivers.

This Rule is generally utilized by the New Jersey Lawyer's Fund for Client Protection (The Fund) when the trustees have reason to believe that a lawyer has stolen trust funds to sustain their lifestyle or practice. Custodial receivership relief is a broad tool available to recapture and preserve assets, similar to R. 1:20-19. The key differences between the appointment of an attorney-trustee and a custodial receiver are as follows:

- That a claim, or the likelihood of a credible claim, will be filed with the Lawyer's Fund for Client Protection alleging that trust money has been stolen;
- The Fund has preliminarily determined that assets might exist and should be preserved;
- The Fund, and not the local Bar, is generally the plaintiff requesting the appointment of a custodial receiver;
- The assets that can be controlled by the receiver are not limited to the affected lawyer's legal practice; and
- The custodial receiver's primary responsibility is to gather assets and protect files. As such, a custodial receiver may not represent any former client who had an open file in the affected lawyer's office at the time of appointment. This prevents any conflict of interest in determining the amount due to the affected attorney's receivership estate.

If you believe that the appointment of a custodial receiver may be more appropriate under the facts of your assignment, please contact the Director of the Lawyer's Fund for Client Protection to discuss your concerns at (855) 533-FUND (3863).

L. Conclusion

We recognize that accepting the assignment to act as an attorney-trustee of the practice of a disabled, suspended, missing, incapacitated or deceased lawyer may be a time-consuming endeavor. Please be assured that you are rendering important service to the vulnerable public, the courts, and other members of the Bar. Each case in which an attorney-trustee is assigned will be unique and provide its own special difficulties and hopefully rewards. This guide was created to anticipate the issues which most commonly arise however, it is therefore impossible to answer every question ahead of time. The Assignment Judge in your vicinage, your county Bar Association and the OAE are here to help. We thank you for your service.

Appendix A

Sample Forms

1. Sample letter to the County Bar Association Advising of the Need for Appointment of Attorney-Trustee
2. Verified Petition for Appointment of Attorney-Trustee
   Verified Petition for Appointment of Attorney -Trustee (njcourts.gov)
3. Petition for Appointment of Regular Attorney-Trustee by a County Bar Association
4. Certification in Support of Petition for Appointment of Regular Attorney-Trustee
5. Order for Appointment of Attorney-Trustee
   https://www.njcourts.gov/sites/default/files/forms/11406_order_appoint_atty_truestee.pdf
6. Notice of Appointment as Attorney-Trustee to Office of Attorney Ethics
7. Notice of Appointment as Attorney-Trustee to Affected Attorney
8. Notice of Appointment to Personal Representative of Deceased Attorney's Estate
9. Sample Inventory of Client Files
10. Sample Letter Advising Client That Lawyer is Unable to Continue to Practice
11. Sample Letter Advising Adversary That Lawyer is Unable to Continue to Practice
12. Receipt and Release for Client File(s)
13. Authorization for Transfer of Client File
14. Notice of Petition for Order to Distribute Identified Trust Funds to Clients or Other Parties
15. Certification in Support of Petition for Order to Distribute Identified Trust Funds to Clients or Other Parties
16. Order to Distribute Identified Trust Funds to Clients or Other Parties
17. Sample Initial Report of Attorney-Trustee
18. Sample Final Report of Attorney-Trustee
19. Petition for Discharge of Attorney-Trustee
20. Order for Discharge of Attorney-Trustee

SAMPLE LETTER TO COUNTY BAR ASSOCIATION ADVISING OF THE NEED FOR APPOINTMENT OF ATTORNEY-TRUSTEE

[Date]

[Name], President
[Name of County] County Bar Association
[Address]

Re: APPOINTMENT OF ATTORNEY-TRUSTEE

Dear Mr./Ms. **[Name of Bar Association President]:**
As a result of the **[death, disability, suspension, disbarment, abandonment or disappearance]** of **[Name of Affected Attorney]**, a New Jersey attorney, it is necessary to secure the appointment of an Attorney-Trustee to protect the interests of the attorney's clients. The procedures governing Attorney-Trustees are found in *R.1:20-19*, a copy of which is enclosed for your convenience. The rule provides that the Assignment Judge of the vicinage where the attorney practiced may, on the application of any interested party, appoint one or more members of the bar as Attorney-Trustee. As President of the _____County Bar Association, I would ask that you file a petition for the appointment of an Attorney-Trustee for the law practice of **[Name of Affected Attorney]**. If the petition is granted, I will appoint an Attorney-Trustee. **When a trustee is appointed, please provide a copy of this letter to the Attorney-Trustee.**

Let me outline for you the general parameters of this appointment and some of the important rule provisions and procedures:

1. Primary Purpose of Appointment.

   The primary purpose of appointing an Attorney-Trustee is to protect clients' interests. Clients with active matters may be unaware of the death, disability, disappearance, disbarment or suspension of an attorney. Therefore, the most essential function of the Attorney-Trustee is to review all client files and determine which are closed or pending. The Attorney-Trustee must then notify all clients having pending matters of the attorney's inability to continue to represent them and the need for them to retrieve their file and secure other counsel. Other duties are set forth in *R. 1:20-19(b)* with respect to funds held in the attorney trust and business accounts. The Attorney-Trustee is **not** an equity receiver.

2. *Pro Bono* Assignment.

   Subject to the discussion below concerning "Legal Fees," this is essentially a *pro bono* assignment. Limited funds are available from the Office of Attorney Ethics for reimbursement of out-of-pocket expenses. At this time, that sum is $3,000. This may be used to hire law students and secretarial help to review files and contact former clients, and to cover costs of moving and storage of files and related out-of-pocket expenses.

3. Exemption from Other *Pro Bono* Assignments.

   The Supreme Court has determined that any *R. 1:20-19* Attorney-Trustee who certifies that he/she has performed at least 25 hours of *pro bono* services in this capacity shall be exempt from other *pro bono* assignments for that year. The exemption claim is to be made to the Assignment Judge.

4. Immunity.

   Under *R. 1:20-19(e)*, all Attorney-Trustees "shall be immune from liability for conduct in the performance of their official duties in accordance with *R. 1:20-7(e)*."

5. Initial/Final Reports to the Court.

   The Attorney-Trustee should begin by assessing the situation. A first report of these findings should be filed with the Assignment Judge within 120 days after the appointment. A final report must be filed and approved prior to discharge. *R. 1:20-19(d)*.

6. Instructions.

   Under R. *1:20-19(d)*, the Attorney-Trustee has the ability to apply to the Assignment Judge for instructions "wherever necessary to carry out or conclude the duties and obligations imposed by this rule."

7. Destruction of Files.

   After a reasonable period of time has passed subsequent to the inventory of files and notification of clients (six to nine months), files may need to be destroyed, as there is simply no money or facilities in which files can be stored forever. The Attorney-Trustee's final report to the Assignment Judge will ask permission to destroy the files and be relieved. The Assignment Judge will usually require that a final notice be placed in a local newspaper advising clients and others that, unless they come forward within a set period of time, usually 30 days, to claim their files, they will be destroyed.

8. Legal Fees.

   Attorney's fees are not often available, except in those few instances where there are sufficient assets of the attorney's practice that, if marshaled and sold pursuant to an order of the Assignment Judge, will generate sufficient funds to make it worthwhile. If such is the case, the Attorney-Trustee enjoys "a priority as an administrative expense." *R. 1:20-19(h)* governs such applications. Where assets are available, however, the Assignment Judge may enter a judgment against the attorney who necessitated the appointment of the Attorney-Trustee. *R. 1:20-19(g)* makes clear that the attorney whose practice has been assumed "is liable to the attorney-trustee for all fees, costs and expenses reasonably incurred by the attorney-trustee as approved by the Court under paragraph (h)."

9. Acceptance of Clients.

   It may be that, as a result of the inventory of pending files, the Attorney-Trustee may wish to accept employment to complete a legal matter. The Attorney-Trustee may do so with the consent of the client. *R. 1:20-19(f)*. However, the Attorney-Trustee is under no obligation to complete any legal work if no attorney-client relationship is established. If the Attorney-Trustee accepts employment in a client matter, immunity for that matter is then lost.

10. Pro Forma Petition and Order.

    Attached for your convenience is a form of petition and a form of order that have been used successfully in other counties.

11. Use of Funds.

I enclose a copy of the Supreme Court's Order dated [date] temporarily suspending/suspending/disbarring this respondent. Please note that the Supreme Court's Order has restrained from disbursement all funds held in any attorney trust or attorney business account, except upon application to the Supreme Court. This Order has already been served on [**date**]. As such, unless an application is made to the Supreme Court, the Attorney-Trustee may not disburse any funds from these accounts.

I understand that this request may be burdensome. However, County Bar Associations across the state have uniformly accepted, and successfully completed, such assignments for many years. If you have any further questions, please do not hesitate to communicate with me.

Very truly yours,

_____

A.J.S.C.

Enclosures

PETITION FOR APPOINTMENT OF ATTORNEY-TRUSTEE BY COUNTY BAR ASSOCIATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY
DOCKET NO.

IN THE MATTER OF **(Name of Attorney),**	**PETITION FOR APPOINTMENT OF ATTORNEY-TRUSTEE** ***[R.1:20-19]***

(**Name of Petitioner**), an Attorney-at-Law of the State of New Jersey, and President of the (Name of County) County Bar Association petitions the Court pursuant to New Jersey Court Rule 1:20-19 for the appointment of an Attorney-Trustee and in support of this petition states as follows:

1. The (**County**) County Bar Association is an association of attorneys-at-law admitted to practice in the State of New Jersey, organized for the purposes of maintaining the honor and dignity of the profession of law, cultivating professional and social relations among its members, advancing the public welfare, and promoting the proper administration of law, and in furtherance of such purposes in an "interested party" in proceedings to obtain the appointment of a trustee for the protection of the assets of any attorney and the interests of such attorney's clients, under *R.1:20-19*, when such attorney appears to have (**died/become disabled/been suspended/disbarred/abandoned his practice/disappeared**) or may have otherwise become subject to the application of said Rule.
2. (Name of Attorney), an attorney-at-law of the State of New Jersey, admitted to practice in (year), and having last maintained an office for the practice of law at (**address**) has (**died/become disabled/been suspended/disbarred/abandoned his practice, disappeared**) on (**date**).
3. (**Name of Attorney**) had made no prior arrangements to appoint a trustee to inventory the client files, take possession of the trust and business accounts and take other appropriate actions, including notification of clients, to protect the interests of his clients and himself.
4. (**Name of Attorney**) did/does not have any partners, shareholders, associates, or any other responsible party capable of conducting the affairs of his law practice, and the Court's appointment of an Attorney-Trustee for said purpose under *R.1:20-19* is necessary and appropriate.
5. (**Name of Prospective Attorney-Trustee**) is an attorney-at-law of the State of New Jersey, admitted to practice in (**year**), and maintaining an office for the practice of law at (address), has agreed to serve as Attorney-Trustee for the law practice of (**Name of Attorney**) if so appointed. (**Other relevant facts supporting his/her appointment as Attorney-Trustee**).

   WHEREFORE, petitioner requests than an Order be entered appointing (**Name of Attorney-Trustee**) Attorney-Trustee to inventory the client files of (**Name of Attorney**), to take possession of his/her trust and business accounts, and take such other action as may be necessary to fulfill the requirements of *R.1:20-19*, and any other action as the Court may deem appropriate.

Respectfully submitted,

(COUNTY) COUNTY BAR ASSOCIATION

By:_____

PETITION FOR APPOINTMENT OF ATTORNEY-TRUSTEE BY COUNTY BAR ASSOCIATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY
DOCKET NO.

IN THE MATTER OF
(Name of Attorney),

PETITION FOR APPOINTMENT OF ATTORNEY-TRUSTEE
[R.1:20-19]

(**Name of Petitioner**), an Attorney-at-Law of the State of New Jersey, and President of the (**Name of County**) County Bar Association petitions the Court pursuant to New Jersey Court Rule 1:20-19 for the appointment of an Attorney-Trustee and in support of this petition states as follows:

1. The (**County**) County Bar Association is an association of attorneys-at-law admitted to practice in the State of New Jersey, organized for the purposes of maintaining the honor and dignity of the profession of law, cultivating professional and social relations among its members, advancing the public welfare, and promoting the proper administration of law, and in furtherance of such purposes in an "interested party" in proceedings to obtain the appointment of a trustee for the protection of the assets of any attorney and the interests of such attorney's clients, under *R.1:20-19*, when such attorney appears to have (**died/become disabled/been suspended/disbarred/abandoned his practice/disappeared**) or may have otherwise become subject to the application of said Rule.

2. (**Name of Attorney**), an attorney-at-law of the State of New Jersey, admitted to practice in (**year**), and having last maintained an office for the practice of law at (address) has (**died/become disabled/been suspended/disbarred/abandoned his practice, disappeared**) on (**date**).

3. (**Name of Attorney**) had made no prior arrangements to appoint a trustee to inventory the client files, take possession of the trust and business accounts and take other appropriate actions, including notification of clients, to protect the interests of his clients and himself.

4. (**Name of Attorney**) did/does not have any partners, shareholders, associates, or any other responsible party capable of conducting the affairs of his law practice, and the Court's appointment of an Attorney-Trustee for said purpose under *R.1:20-19* is necessary and appropriate.

5. (**Name of Prospective Attorney-Trustee**) is an attorney-at-law of the State of New Jersey, admitted to practice in (**year**), and maintaining an office for the practice of law at (**address**), has agreed to serve as Attorney-Trustee for the law practice of (**Name of Attorney**) if so appointed. (**Other relevant facts supporting his/her appointment as Attorney-Trustee**).

WHEREFORE, petitioner requests than an Order be entered appointing (**Name of Attorney-Trustee**) Attorney-Trustee to inventory the client files of (**Name of Attorney**), to take possession of his/her trust and business accounts, and take such other action as may be necessary to fulfill the requirements of *R.1:20-19*, and any other action as the Court may deem appropriate.

Respectfully submitted,

(COUNTY) COUNTY BAR ASSOCIATION

By: _____

NOTICE TO OFFICE OF ATTORNEY ETHICS OF APPOINTMENT AS ATTORNEY-TRUSTEE

[Date]

Johanna Barba Jones, Director
Office of Attorney Ethics
P.O. Box 963
Trenton, New Jersey 08625

Re: Notice of Appointment as Attorney-Trustee

Dear Ms. Jones:

Please accept this letter as notice of my appointment as Attorney-Trustee for law practice of **[Name of Affected Attorney]**. A copy of the Court's Order is enclosed.

Please feel free to contact me if you have any questions or wish to discuss the matter.

Very truly yours,

_____

[Name of Attorney-Trustee]
Attorney-Trustee for **[Name of Affected Attorney]**

Enc.
cc: President or Executive Director, **[Name of County]** County Bar Association
District Ethics Committee Secretary
Fee Arbitration Committee Secretary
[Affected Attorney] [optional]

NOTICE TO AFFECTED ATTORNEY OF APPOINTMENT AS ATTORNEY-TRUSTEE

[Date]

[Means of Service]

[Name of Suspended, Disbarred or Disabled Attorney]
[Residential Address]

Re: Notice of Pending Claim Against **[Name of Suspended, Disbarred or Disabled Attorney]**

Dear Mr./Ms. **[Last Name of Suspended, Disbarred or Disabled Attorney]:**

As you may know, I have been appointed Attorney-Trustee of your law practice for the purpose of closing down the office in an orderly manner. A copy of the Order is enclosed. Please accept this letter as notice that, in accordance with New Jersey Court Rule 1:20-19(g) and (h), I plan to apply to the court for compensation from you for my services as Attorney-Trustee. My motion for compensation will include all out-of-pocket expenses and a charge of $_____ per hour of my time spent executing the duties of my appointment.

Please respond, in writing, within 10 days of the date of this letter if you have any questions or concerns regarding this billing arrangement. If I do not hear from you, I will assume that this fee structure is acceptable to you.

Very truly yours,

_____

[Name of Attorney-Trustee], Attorney-Trustee

NOTICE TO PERSONAL REPRESENTATIVE OF DECEASED ATTORNEY'S ESTATE OF APPOINTMENT AS ATTORNEY-TRUSTEE

[Date]

[Means of Service]

[Name of Personal Representative], Personal Representative
Estate of **[Name of Deceased Attorney]**
[Personal Representative Address]

Re: Notice of Pending Claim Against Estate of **[Name of Deceased Attorney]**

Dear Mr./Ms. **[Last Name of Personal Representative]**:

As you may know, I have been appointed Attorney-Trustee of the law practice of **[Name of Deceased Attorney]** for the purpose of closing down the practice. A copy of court Order is enclosed. Please accept this letter as notice that I plan to apply to the court for compensation from the Estate of **[Name of Deceased Attorney]** for my services as Attorney-Trustee following the closing down of the practice. Pursuant to New Jersey Court Rule 1:20-19(h) and the attached Order, any compensation awarded by the court for attorney's fees, costs and expenses is to be considered an administrative expense of the estate for purposes of determining priority of payment.

Please feel free to call if you have any questions or wish to discuss this matter.

Very truly yours,

_____

[Name of Attorney-Trustee], Attorney-Trustee

CLIENT FILE INVENTORY
FILE DISPOSITION

File Number	Client Last. First Name	Date File Opened	Date File Closed	Type of Matter	Date Contacted By Mail	Date Retrived File	File Copies and Retained?	Eligible for Destruction
####	NAME	XX/XX/ XXXX	XX/XX/ XXXX	Matter Description	XX/XX/ XXXX	XX/XX/ XXXX	Y or N	Y or N

SAMPLE LETTER ADVISING CLIENT THAT LAWYER IS UNABLE TO CONTINUE TO PRACTICE

[Sample – Modify as appropriate]

FIRM LETTERHEAD

[Date]

[Client name]
[Client address]

Re: **[Name of case; caption of case; file number]**

Dear Mr./Ms. [Last Name of Client]:

Please be advised that due to the [death/disability/suspension/disbarment/ abandonment/disappearance] of **[Name of Affected Attorney]** he/she is no longer able to practice law. I have been appointed Attorney-Trustee by the Superior Court of New Jersey to assist in closing **[Name of Affected Attorney]**'s law practice. You will need to retain the services of another attorney to represent you in your legal matters.

Please note that I have not been appointed, nor am I available, to represent you in your matter. You must obtain other counsel to represent you in your matter. You must obtain other counsel as soon as possible to handle your matter if it requires attention. You may select any New Jersey attorney you wish.

or
Please note that I have not been appointed to represent you in your matter. It is possible that I may be able to represent you in your matter if you so desire. However, you are under no obligation to have me represent you and you may select any New Jersey attorney you wish. If you want me to represent you in your matter, please contact my office and scheduled an appointment to meet with me.

If you have retained another attorney to represent you and wish to have your file released directly to your new attorney, please sign the enclosed authorization for release. You or your new attorney can return this authorization to me and I will release the file as instructed.

If you prefer, you can come to **[Location for Pick Up]** and pick up a copy of your file yourself. Please call prior to coming to the office so that we can have the file ready and waiting for you when you arrive. Also, please bring identification as your file(s) will not be released without identification. No one, including your new attorney or spouse, can pick up your file(s) without your specific, written instructions for us to release your file(s) to them. It is essential that you pick up your file(s) or make arrangements to have your file(s) transferred to your new attorney by **[Date]**. It is imperative that you act promptly so that all of your legal rights will be preserved.

If you do not pick up your file(s) by **[Date]**, we will assume that you do not need or want them and agree to have us dispose of the file(s) in a manner that preserves their confidential nature. To the extent possible, we will avoid destroying any irreplaceable documents such as Last Wills. Please understand that it is extremely difficult for us to determine what remains valuable and useful information in your case file(s) or whether you may need this information in the future. These files will not be kept indefinitely.

If you have any questions, you may call me at **[Phone Number]** during normal business hours.

Thank you.

Very truly yours,

_____

[Name of Attorney-Trustee], Attorney-Trustee

SAMPLE LETTER ADVISING AN ADVERSARY THAT LAWYER IS UNABLE TO CONTINUE TO PRACTICE

[Sample – Modify as appropriate]

FIRM LETTERHEAD

[Date]

[Attorney Name]
[Attorney address]

Re: [Name of case; caption of case; file number]

Dear Mr./Ms. **[Last Name of Attorney]**:

Please be advised that due to the **[death/disability/suspension/disbarment/ abandonment/disappearance]** of **[Name of Affected Attorney]** he/she is no longer able to practice law. I have been appointed Attorney-Trustee by the Superior Court of New Jersey to assist in closing [Name of Affected Attorney]'s practice. I have attached a copy of the Order appointing me in this capacity for your convenience.

It has come to my attention that you may be involved in litigation with **[Name of Affected Attorney]**. I will be acting diligently to notify [his/her] clients of the need to expeditiously obtain new counsel and any courts where matters are pending that **[Name of Affected Attorney]** will be unable to appear. I will likewise endeavor to obtain reasonable extension of discovery and court deadlines, appearances and statutes of limitations where possible. I request your courtesy in this regard.

Should you have additional questions or concerns, please feel free to contact me at **[Phone number]** during normal business hours.

Very truly yours,

_____

[Name of Attorney-Trustee], Attorney-Trustee

RECEIPT AND RELEASE FOR CLIENT FILE(S)

Law Office of **[Name of Attorney-Trustee]**

I, _____, hereby confirm that on _____, 20___, **[Name of Attorney-Trustee]**, Esq., Attorney-Trustee for the law practice of **[Name of Affected Attorney]**, provided me with my (original) file(s) concerning the following type(s) of legal matter(s):

_____

_____

I affirm that I am entitled to receive said file(s) because I am a current or former client or duly authorized representative of a current or former client of **[Name of Affected Attorney]**.

Full Name: _____
Signature

_____
Type or Print

Date: _____

Current Address: _____

_____

Telephone Numbers: _____
Office Home

For Office use:
File(s) identified as (name/number on file):

Identity of Recipient confirmed by:
__ Driver license number __ Other _____

Staff Witness Signature: _____

AUTHORIZATION FOR TRANSFER OF CLIENT FILE

I hereby authorize **[Name of Attorney-Trustee]**, Esq., Attorney-Trustee for the law practice of [Name of Affected Attorney] to deliver a copy of my file **[case name, docket number or file number, if any]** to my new attorney at the following address:

_____
_____
_____
_____

_____
(Client)

_____
(Date)

NOTICE OF PETITION FOR ORDER TO DISTRIBUTE TRUST FUNDS TO CLIENTS OR OTHER PARTIES

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY

DOCKET NO.

IN THE MATTER OF **[Name of Attorney],**	**NOTICE OF PETITION FOR ORDER TO DISTRIBUTE IDENITIFED TRUST FUNDS TO CLIENTS OR OTHER PARTIES**

TO:

PLEASE TAKE NOTICE that on a date and time to be set by the Court, the undersigned, Attorney-Trustee of the law practice of **[Name of Affected Attorney]**, will move before the Honorable [Name of Assignment Judge or designee], located at **[Address of Court]** for an Order permitting the distribution of certain funds in the attorney trust account of **[Name of Affected Attorney]**.

In support of the within motion, the undersigned will rely on the attached Certification.

A proposed form of Order is attached.

_____

[Name of Attorney-Trustee], Attorney-Trustee

PETITION FOR ORDER TO DISTRIBUTE TRUST FUNDS TO CLIENTS OR OTHER PARTIES

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY

DOCKET NO.

IN THE MATTER OF

[Name of Attorney],

CERTIFICATION IN SUPPORT OF PETITION FOR ORDER TO DISTRIBUTE IDENTIFIED TRUST FUNDS TO CLIENT OR OTHER PARTIES

[**Name of Attorney-Trustee**], of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey.
2. On or about [**Date of Order of Appointment**], the Honorable [**Name of Assignment Judge or designee**], appointed me Attorney-Trustee of the law practice of [**Name of Affected Attorney**] who:

    a. Died on or about [**Date of Affected Attorney's Death**], leaving no partner, shareholder, executor, administrator or other responsible party capable of conducting his/her affairs.

    OR

    b. Was transferred to disability-inactive status by the New Jersey Supreme Court on [**Date of Order transferring to Disability-Inactive Status**].

    OR

    c. Was [**suspended/disbarred**] from the practice of law by Order dated [**Date of Suspension or Disbarment Order**];

    OR

    d. Abandoned his/her law practice without adequate safeguards for the interests of his/her clients on or about [**Date of Abandonment**].

    OR

    e. Disappeared on or about [**Date of Disappearance**], with no partner, shareholder, executor, administrator or other responsible party capable of conducting his/her affairs.

3. Following the appointment, the undersigned Attorney-Trustee of the law practice [**Name of Affected Attorney**], took possession of records relating to the attorney trust account[s] maintained by [**Name of Affected Attorney**] at [**Bank Name(s)**], account number(s) XXXX for the purpose of determining the ownership of the funds in the account.
4. The Attorney-Trustee [**If Applicable - utilizing a bookkeeper,** [**Bookkeeper Name**]] **reviewed the attorney trust account**[**s**] for the period [**Dates Spanning Review**].
5. As of [**Date of This Petition**], the apparent aggregate balance in the attorney trust account[s] of [**Name of Affected Attorney**] at [**Bank Name(s)**] was $XXX.XX.
6. Office records show that the total value of trust account funds belonging to clients of [**Name of Affected Attorney**] is $XXX.XX.
7. The attached Attorney-Trustee Plan for the Distribution of Client Trust Funds (hereafter "ATPDCTF") details which clients are owed funds and the value of trust funds belonging to each client.
8. The Attorney-Trustee has received no notice of any claim from any former Client of [**Name of Affected Attorney**] or any other individual or entity that is not reflected in the ATPDCTF.
9. Prior to filing, Attorney-Trustee inquired of [**Personal Representative or Name of Affected Attorney or Affected Attorney's Closest Known Surviving Relative Name**] whether they received any other claims against the attorney trust account(s) of [**Name of Affected Attorney**]. [**IF NECESSARY** – All such claims have been incorporated into attached ATPDCTF. OR No such claims were acknowledged by [**Personal Representative or Name of Affected Attorney or Affected Attorney's Closest Known Surviving Relative Name**].
10. Despite his/her best efforts, the Attorney-Trustee has been unable to determine the owners of the remaining $XXX.XX in the attorney trust account of [**Name of Affected Attorney**].

    OR

    The ascertainable liabilities of the attorney trust account[s] maintained by [**Name of Affected Attorney**] exceeded the available assets leaving a net deficit of $XXX.XX.
11. The Attorney-Trustee will serve claimants against the attorney trust account of [**Name of Affected Attorney**] named in the attached plan, with a copy of this motion by depositing same, postage prepaid, into ordinary course of U.S. mail this date.
12. I make this Certification in support of motion for an Order permitting the Attorney –Trustee to distribute funds from the attorney trust account[s] of [**Name of Affected Attorney**] at [**Bank Name(s)**] pursuant to the plan Appended hereto and titled "Attorney-Trustee Plan for the Distribution of Client Trust Funds" and such further relief as this honorable Court deems just and proper.
13. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____

[Name of Attorney-Trustee], Attorney-Trustee

ORDER TO DISTRIBUTE IDENTIFIED TRUST FUNDS TO CLIENTS OR OTHER PARTIES

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY

DOCKET NO.

IN THE MATTER OF [Name of Attorney],	**ORDER TO DISTRIBUTE IDENTIFIED TRUST FUNDS TO CLIENTS OR OTHER PARTIES**

THIS MATTER having been brought to the Court on Petition of Attorney-Trustee for an Order permitting the distribution of certain funds in the attorney trust account of **[Name of Affected Attorney], a [deceased/disabled/suspended/disbarred/missing]** attorney, and good cause shown,

IT IS on this _____ day of _____, 20___,

ORDERED that the Attorney-Trustee Plan for Distribution of Client Trust Funds (ATPDCTF) appended to the Petition is approved, and it is further

ORDERED that the Attorney-Trustee is permitted to distribute funds from the attorney trust account of **[Name of Affected Attorney]** at **[Bank Name]** pursuant to the ATPDCTF.

Dated: _____

INITIAL REPORT OF ATTORNEY-TRUSTEE PURSUANT TO RULE 1:20-19(d)

[CAPTION]

INITIAL REPORT OF ATTORNEY TRUSTEE

I, **[Name of Attorney-Trustee]**, was appointed Attorney-Trustee of the law practice of **[Name of Affected Attorney]** pursuant to an Order of the Court dated **[Date of Appointment Order]**. A true copy of the Order appointing me as Attorney-Trustee is attached hereto as Exhibit A.

Pursuant to New Jersey Court Rule 1:20-19(h), I respectfully submit this Initial Report which describes the nature and scope of the work I have performed as Attorney-Trustee to-date, including the significant activities taken in meeting my obligations as Attorney-Trustee.

Inventory and Distribution of Client Files

Following my appointment as Attorney-Trustee, I entered the law office of **[Name of Affected Attorney]** located at **[Address of Law Office]** and secured all client files. There were over **[Number]** client files to be reviewed. As of **[Date]**, I have reviewed **[Number]** files, sorting them into active and closed categories. I have begun a Master File Inventory, a copy of which is attached hereto as Exhibit B.

As of **[Date]**, I have identified **[Number]** clients with active matters. I have contacted these clients by mail, and in many cases also by phone, to advise them of the inability of [Name of Affected Attorney] to continue to represent them in their legal matters. They were further advised of the need to retain new counsel to represent their interests and collect their files. See sample letter to clients attached as Exhibit C. Approximately **[Number]** letters were returned as undeliverable.

Notification of Presiding Civil Judge

Because **[Name of Affected Attorney]** had an active civil practice in **[Name of County]**, on **[Date]**, I notified the Honorable **[Name of Presiding Judge]**, P.J.S.C., that I had been appointed Attorney-Trustee for **[Name of Affected Attorney]**. The judge's secretary offered to provide me with a list of pending matters by **[Date]** to assist me in determining active files.

Attorney Trust and Business Accounts

On **[Date]**, I took possession of the Attorney Trust Account and Attorney Business Account. I have located and gathered all Attorney Trust Account and Attorney Business Account records. I intend to request bank statements from [Name of Bank] and complete three-way reconciliations prior to [Date]. I will also update the receipts and disbursement journals by **[Date]**.

Deposit of Settlement Checks

On **[Date]**, I received a settlement check in the amount of $ XX.XX, on behalf of **[Name of Client Matter]**, which I deposited on **[Date]** in **[Name of Affected Attorney]**'s attorney trust account **[Last Four Digits of Account Number]** at **[Bank Name]**.

Conclusion

In conclusion, I respectfully submit this initial Attorney-Trustee report pursuant to R. 1:20-19(d).

FINAL REPORT OF ATTORNEY-TRUSTEE PURSUANT TO RULE 1:20-19(d)

[CAPTION]

FINAL REPORT OF ATTORNEY TRUSTEE

I, **[Name of Attorney-Trustee]**, was appointed Attorney-Trustee of the law practice of **[Name of Affected Attorney]** pursuant to an Order of this Court dated **[Date of Appointment Order]**. A true copy of the Order appointing me as Attorney-Trustee is attached hereto as Exhibit A.

Pursuant to New Jersey Court Rule 1:20-19(d), I respectfully submit this Final Report which describes the nature and scope of the work I performed as Attorney-Trustee, including an inventory and disposition of active case files, an accounting of the trust and business accounts, and disposition of remaining assets. A copy of this Final Report will be attached to my Petition for Order Discharging me as Attorney-Trustee.

Inventory and Distribution of Client Files

Following my appointment as Attorney-Trustee, I entered the law office of **[Name of Affected Attorney]** located at **[Address of Law Office]** and secured all client files. I then reviewed each of them to determine which were active and which were closed. Each file was listed on a Master File Inventory, a copy of which is attached hereto as Exhibit B.

According to the Master File Inventory, a total of XXX files were inventoried. XXX were identified as active files and XXX were identified as closed files.

Clients with active matters were contacted by mail, and in many cases also by phone, to advise them of the inability of **[Name of Affected Attorney]** to continue to handle their matters. They were further advised of the need to retain new counsel to represent their interests and retrieve their files. See the attached sample letter to clients attached as Exhibit C. Approximately XX letters were returned as undeliverable.

An advertisement(s) entitled "Notice of Office Closing" was/were placed in **[Name of Newspaper]** or **[Date of Advertisement(s)]**. See copy of advertisement(s) attached hereto as Exhibit D.

Clients who responded to our letters or phone calls scheduled appointments to pick up their files or asked that we mail their files to them or send the files directly to successor counsel. All but XX client(s) having active matters have had their files either picked up by them, an authorized individual or successor counsel, or had their files either mailed or delivered to them or their successor counsel.

Despite all reasonable efforts to contact and distribute files to clients, we remain in possession of XXX client files as listed on the Master File Inventory. I have made arrangements to store all active files and all closed files that have been closed for seven (7) years or less at **[Address Where Files Will Be Stored]**. I am seeking authorization to destroy all closed files listed on the Master File Inventory that are older than seven (7) years.

Attorney Trust and Business Accounts

In addition to inventorying and distributing client files, I took possession of the attorney's trust and business accounts of **[Name of Affected Attorney]** by locating and gathering all attorney trust and business account records. I then reviewed the records, performed three-way reconciliations of the attorney trust account, and brought individual client ledgers up to date.

Distribution of Identified Trust Funds to Clients or Other Parties

After determining the ownership of the funds in the attorney trust account, I filed a petition, requesting the court to authorize the Attorney-Trustee to distribute identified trust funds to client or other parties. A copy of that petition is attached hereto as Exhibit D and a true copy of the Order authorizing the distribution of identified trust funds is also attached hereto as Exhibit E.

Disposition of Remaining Funds and Assets

After determining the ownership of the funds in the attorney trust account, $_____ remained as unidentified funds. I filed a petition with the Superior Court Trust Fund, pursuant to R.1:21-6(j), for deposit of those unidentified funds with the Superior Court Trust Fund. A copy of that petition is attached hereto as Exhibit F.

Conclusion

In conclusion, I respectfully submit this final Attorney-Trustee report pursuant to R. 1:20-19(d).

_____

[Name of Attorney-Trustee], Attorney-Trustee

PETITION FOR DISCHARGE OF ATTORNEY-TRUSTEE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY
DOCKET NO.

IN THE MATTER OF

(Name of Attorney),

Formerly An Attorney-At-Law of the State of New Jersey,

PETITION FOR DISCHARGE OF ATTORNEY-TRUSTEE [R.1:20-19]

[Name of Petitioner], an attorney-at-Law of the State of New Jersey, appointed attorney-trustee for **[Name of Attorney]**, states as follows:

1. On **[Date]**, I was appointed attorney-trustee for **[Name of Attorney]**. A true and correct copy of the Court's Order is attached hereto as "Exhibit A."
2. On **[Date]**, I filed an Interim Report of the Attorney-Trustee with the court. A true and correct copy of the Interim Report is attached hereto as "Exhibit B."
3. On **[Date]**, I filed a Final Report to the Attorney-Trustee with the court. A true and correct copy of the Final Report is attached hereto as "Exhibit C."
4. On **[Date]**, the court filed an Order for Publication, File Disposal, Office Closure, and Payment of Interim Fees. A true and correct copy of the Court's Order is attached hereto as "Exhibit D."
5. The court's instructions have been carried out.
6. I, **[Name of Attorney-Trustee]**, request that I hereby be discharged as Attorney-Trustee for **[Name of Attorney]** and released from any and all liability and/or further responsibilities, obligations, or duties associated therewith.

Respectfully submitted,

[NAME]
Attorney-Trustee for **[Name]**
Signature Line here

ATTORNEY-TRUSTEE ORDER FOR DISCHARGE OF ATTORNEY-TRUSTEE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, COUNTY
DOCKET NO.

IN THE MATTER OF

A DISCIPLINED ATTORNEY

ORDER FOR DISCHARGE OF ATTORNEY-TRUSTEE
[Rule1:20-19]

THIS MATTER, having been brought before the court on the petition of , for the appointment of an Attorney-Trustee pursuant to R.1:20-19, and, the Court having appointed as Attorney-Trustee for _____on _____.

IT IS on this _____day of _____, 20___ **ORDERED** that_____is hereby relieved of his duties as Attorney-Trustee for _____, and it is

IT IS FURTHER ORDERED that__$_____shall be transferred into a separate Attorney-Trust Account for _____ Attorney-Trustee for _____, such account established for the sole purpose of paying for the storage/retrieval/destruction fees and costs for all remaining files in storage;

IT IS FURTHER ORDERED that all filing fees in this matter are hereby waived;

IT IS FURTHER ORDERED that the Attorney-Trusteeship is hereby vacated and that a copy of this Order shall be served upon all interested parties within ten (10) days;

_____

, A.J.S.C

Appendix B

New Jersey Court Rules

https://www.njcourts.gov/attorneys/rules-of-court

1. Rule 1:20-12
2. Rule 1:20-19
3. Rule 1:20-20
4. Rule 1:20-7(e)
5. Rule 1:21-6
6. Rule 1:28-8
7. Rule 1:39-6(d)

1:20-12. Incapacity and Disability

(a) Disability Inactive Status; Effect of Judicial Determination of Mental Incapacity or on Involuntary Commitment. When an attorney who is admitted to practice in this state has been judicially declared mentally incapacitated or involuntarily committed to a mental hospital, the Supreme Court, on proof of the fact, shall enter an order transferring the attorney to disability inactive status, effective immediately and until further order of the Court. Such transfer shall stay any pending disciplinary proceedings. When an attorney who has been transferred to disability inactive status is thereafter, in proceedings duly taken, judicially declared to be competent, the Court may dispense with the need for further evidence that the disability has been removed and may direct reinstatement on such terms as are deemed proper and advisable. Any judge sitting in a court in this state who declares an attorney admitted to practice in this state mentally incapacitated, or who commits such attorney to a mental hospital, or who thereafter declares the attorney to be competent shall, on entry of the final order, promptly forward a copy to the Director.

(b) Request For Medical Examination. Whenever the Director presents evidence which reasonably brings into question the capacity of an attorney to practice law, whether by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, the Board shall direct that the attorney submit to such medical examination as may be appropriate to enable the Director to determine whether the attorney is so incapacitated. Such action shall be taken on an expedited basis. hereafter the Director may request the Board to recommend to the Supreme Court that the attorney be immediately transferred to Disability Inactive Status. If the Board concludes that the attorney lacks the capacity to practice law, it shall forthwith recommend to the Supreme Court that the attorney be transferred to disability inactive status until the further order of the Court. No pending disciplinary proceeding against the attorney shall be held in abeyance unless the Court shall additionally find that the respondent is incapable of assisting counsel in defense of any ethics proceedings.

(c) Assignment of Counsel; Notice of Proceedings. Either the Court or the Board may order the assignment of counsel for an attorney during any proceeding under this rule if it is in the interest of justice to do so. A copy of all applications and orders made pursuant to this rule shall be served on the attorney or counsel, any guardian, or the director of any institution to which the attorney has been committed.

(d) Proceedings to Determine Incapacity. Information relating to an attorney's physical or mental condition that adversely affects the capacity to practice law may be investigated and, where warranted, shall be the subject of a hearing to determine whether the attorney shall be transferred to disability inactive status. In conjunction with any such investigation the Director may also request the Board to direct the attorney to submit to an appropriate medical examination. All proceedings and any formal hearing shall be conducted in the same manner as disciplinary proceedings. The issue before the hearing panel or special ethics master, the Board and the Court shall be whether the attorney lacks the capacity to practice law. If on due consideration of the matter the Court concludes that the attorney lacks the capacity to practice law, it shall enter an order transferring the attorney to disability inactive status for an indefinite period and until the further order of the Court.

(e) Inability to Properly Defend. If, during the course of a disciplinary proceeding, the respondent is unable to assist counsel in defense of the matter due to mental or physical incapacity, the Court shall immediately transfer the respondent to disability inactive status pending determination of the incapacity.

If the Court determines that the attorney is unable to defend against the charges or complaint because of mental or physical incapacity, the disciplinary proceeding shall be deferred, and the respondent retained on "disability inactive" status until the Court subsequently considers a petition for restoration of the respondent to active status. On application of the Director, the Court may also make such order for the perpetuation of testimony in the disciplinary proceedings as may be appropriate. If the Court considering a petition for restoration determines to grant the petition, any deferred disciplinary proceedings shall be reactivated.

If the Court determines that the attorney is able to defend against the charges or complaint, the disciplinary proceeding shall resume.

(f) Transfer to Active Status on Termination of Disability. Any attorney transferred to disability inactive status under the provisions of this rule shall be ineligible to practice law and shall comply with R. 1:20-20 governing suspended attorneys. Such attorney may apply for transfer to active status on notice to the Director. No such attorney shall be eligible to practice law until transferred to active status by order of the Supreme Court. Such application may be granted by the Court or referred by the Court for hearing in accordance with paragraph (d) above.

(g) Burden of Proof. In a proceeding seeking an order of transfer to disability inactive status, the burden of proof by clear and convincing evidence shall rest with the petitioner. In a proceeding seeking an order revoking the disability inactive status, the burden of proof by clear and convincing evidence shall rest with the attorney.

(h) Waiver of Doctor-Patient Privilege. Either the filing of an application by an attorney for transfer to disability inactive status or the filing of an application by an attorney for transfer from disability inactive to active status shall be deemed to constitute a waiver of any doctor-patient privilege. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution or facility by whom or at which the attorney has been examined, evaluated or treated. The attorney shall furnish to the Director written consent to the release of such information and records as requested.

Note: Adopted January 31, 1984 to be effective February 15, 1984; paragraph (g) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) caption and text amended, paragraphs (c) and (d) deleted, new paragraphs (c), (d) and (e) added and former paragraphs (e), (f) and (g) amended and redesignated (f), (g) and (h) November 7, 1988 to be effective January 2, 1989; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; former R. 1:20-9 redesignated as R. 1:20-12, paragraphs (a) through and (h) amended January 31, 1995 to be effective March 1, 1995; caption and text of paragraph (a) amended July 12, 2002 to be effective September 3, 2002.

ORIGINAL 1995 RULE COMMENTS NOT UPDATED BY COURT TO REFLECT SUBSEQUENT RULE AMENDMENTS

This rule, formerly R. 1:20-9, has been adopted virtually unchanged, except for some language change in paragraphs (a), (b), (c), (d), (e), (f) & (h).

In accordance with R. 1:20-9(f), all disability proceedings are confidential.

1:20-19. Appointment of Attorney-Trustee to Protect Clients' Interest

(a) Jurisdiction; Appointment.

(1) Regular Attorney-Trustee. If an attorney has been suspended or disbarred or transferred to disability-inactive status and has not complied with R. 1:20-20 (future activities of disciplined or disability-inactive attorneys), or has abandoned the law practice, or cannot be located, or has died, and no partner, shareholder, executor, administrator or other responsible party capable of conducting the respondent's affairs as stated hereinafter is known to exist, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint one or more members of the bar of the vicinage where the law practice is situate as attorney-trustee. Where a responsible party capable of conducting respondent's affairs is known to exist, and where that person is a New Jersey attorney or has retained a New Jersey attorney, that attorney may be appointed and directed to take appropriate action. Notice of an order of appointment shall be given to the Director of the Office of Attorney Ethics and the secretaries of the appropriate Ethics Committee and Fee Committee and county bar association in the vicinage.

(2) Temporary Attorney-Trustee. When, in the opinion of the Assignment Judge, an attorney is otherwise unable to carry on the attorney's practice temporarily so that clients' matters are at risk, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint a temporary attorney-trustee for a period of up to six months following the same conditions and procedures set forth in subparagraph (a)(1) of this Rule. The purposes of the temporary attorney- trustee shall be to preserve, in so far as practical, the practice of the attorney and all attorney-client relationships pending a report to the Assignment Judge at 150 days after appointment as to the attorney's condition and ability to resume the practice. The Assignment Judge may then either dissolve the temporary attorney-trusteeship or convert it to a regular attorney-trusteeship as if created under subparagraph (a)(1) of this Rule.

The temporary attorney-trustee shall have the powers and responsibilities authorized by the Assignment Judge, as well as those specifically granted above and those in paragraphs (c), (e) and (h). The temporary attorney-trustee shall not have the powers granted under paragraphs (d), (f) and (g), except that the reports required by paragraph (d) shall be filed.

The temporary attorney-trustee shall not apply for legal fees within the first thirty days after appointment but may at any time be awarded reasonable costs and expenses as stated under paragraph (h), including the right to satisfy those costs and expenses from the attorney's business or personal accounts as directed by the Assignment Judge. After thirty days from appointment, the temporary attorney-trustee may apply to the Assignment Judge for reduced legal fees below the normal hourly rate in accordance with paragraph (h).

The attorney whose practice is subjected to a temporary trusteeship shall have the right to make application at any time for an order vacating the temporary trusteeship on notice to all interested parties.

(b) Purposes; Inventory of Files, Trust and Other Assets. The purposes of the appointment shall be (1) to inventory active files and make reasonable efforts to distribute them to clients, (2) to take possession of the attorney trust and business accounts, (3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and (4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court. The attorney-trustee shall have no obligation or liability to the attorney. The attorney-trustee may take possession of the attorney's law practice and, in accordance with R.1:20-20(b)(13), all monies and fees due the attorney for the sole purpose of creating a fund for payment of reasonable fees, costs and expenses of the trusteeship as ordered by the court under paragraph (h).

(c) Protection of Client Information. Any attorney-trustee shall not disclose any information contained in any files under this rule without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment or to comply with any request from an Ethics Committee or the Director.

(d) Reports; Instructions. The attorney-trustee shall file an initial report with the Assignment Judge or designee within 120 days after appointment and a final report prior to being discharged. The reports shall describe the nature and scope of the work accomplished and to be accomplished under this rule and the significant activities of the attorney-trustee in meeting the obligations under the rule. The final report must include accountings for any trust and business accounts, the disposition of active case files and any requests for disposition of remaining files and property. The attorney-trustee may apply to the Assignment Judge, or such other Judge as may be designated, for instructions whenever necessary to carry out or conclude the duties and obligations imposed by this rule.

(e) Immunity. All attorney-trustees appointed pursuant to this rule shall be immune from liability for conduct in the performance of their official duties in accordance with R. 1:20-7(e). This immunity shall not extend to employment under section (f).

(f) Acceptance of Clients. With the consent of any client, the attorney-trustee may, but need not, accept employment to complete any legal matter.

(g) Legal Responsibility of Attorney. The attorney for whom an attorney-trustee has been appointed is liable to the attorney-trustee for all fees, costs, and expenses reasonably incurred by the attorney-trustee as approved by the court under paragraph (h).

(h) Legal Fees and Costs. The attorney-trustee shall be entitled to reimbursement from the attorney for (1) actual expenses incurred by the attorney-trustee for costs, including, but not limited to, reasonable secretarial, paralegal, legal, accounting, telephone, postage, moving and storage expenses, and (2) reasonable hourly attorneys' fees. Application for allowance of fees, costs, and expenses shall be made by affidavit to the appointing judge, or designee, who may enter a judgment in favor of the attorney-trustee against the attorney. The application shall be accompanied by an accounting in a form and substance acceptable to the court. The application shall be made on notice to the attorney or, if deceased, to the attorney's personal representative, or heirs. For good cause shown, an interim application for costs and legal fees may be made. The attorney-trustee shall be accorded a priority as an administrative expense for all attorney fees, costs, and expenses awarded by the court. If, after paying the attorney-trustee, there are funds or assets remaining, the Assignment Judge or designee may make such order of disposition as may be appropriate.

Note: Adopted November 5, 1986 to be effective January 1, 1987; former R. 1:20-12 redesignated 1:20-19, paragraphs (a) and (b) amended and paragraph (f) adopted January 31, 1995 to be effective March 1, l995; paragraph (a) amended, former paragraphs (b), (c), and (f) redesignated as (c), (d), and (h) and captions and text amended, former paragraphs (d) and (e) redesignated as (e) and (f) and amended, and new paragraphs (b) and (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) text redesignated as subparagraph (a)(1), subparagraph (a)(1) caption adopted, new subparagraph (a)(2) caption and text adopted July 9, 2008 to be effective September 1, 2008.

1:20-20. Future Activities of Attorney Who Has been Disciplined or Transferred to Disability Inactive Status

(a) Prohibited Association. No attorney or other entity authorized to practice law in the State of New Jersey shall, in connection with the practice of law, employ, permit or authorize to perform services for the attorney or other entity, or share or use office space with, another who has been disbarred, resigned with prejudice, transferred to disability-inactive status, or is under suspension from the practice of law in this or any other jurisdiction.

(b) Notice to Clients, Adverse Parties and Others. An attorney who is suspended, transferred to disability inactive status, disbarred, or disbarred by consent or equivalent sanction:

(1) shall not practice law in any form either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency;

(2) shall not occupy, share or use office space in which an attorney practices law;

(3) shall not furnish legal services, give an opinion concerning the law or its application or any advice with relation thereto, or suggest in any way to the public an entitlement to practice law, or draw any legal instrument;

(4) shall not use any stationery, sign or advertisement suggesting that the attorney, either alone or with any other person, has, owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law;

(5) shall, except for the purposes of disbursing trust monies for the 30-day period stated in this subparagraph, cease to use any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or in connection with the words "law office". If the suspension is for a period greater than six months, or involves a temporary suspension that lasts for more than six months, or involves transfer to disability-inactive status, disbarment, disbarment by consent or their equivalent sanction, the attorney shall, within the 30 day period prescribed in subparagraph (15), disburse all attorney trust account monies that are appropriate to be disbursed and shall arrange to transfer the balance of any trust monies to an attorney admitted to practice law in this state and in good standing for appropriate disbursement, on notice to all interested parties, or dispose of the balance of funds in accordance with R. 1:21-6(j), "Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners"; however, it shall not be a violation of this subparagraph for an attorney to take appropriate action to comply after the stated 30-day period;

(6) shall, from the date of the order imposing discipline (regardless of the effective date thereof), not solicit or procure any legal business or retainers for the disciplined attorney or for any other attorney;

(7) shall promptly request the telephone company to remove any listing in the telephone directory indicating that the attorney is a lawyer, or holds a similar title;

(8) shall promptly request the publishers of Martindale-Hubbell Law Directory, the New Jersey Lawyers Diary and Manual, and any other law list in which the attorney's name appears, including all websites on which the attorney's name appears, to remove any listing indicating that that attorney is a member of the New Jersey Bar in good standing;

(9) shall notify the admitting authority in any jurisdiction to whose bar the attorney has been admitted of the disciplinary action taken in the State of New Jersey;

(10) shall, except as otherwise provided by paragraph (d) of this rule, promptly notify all clients in pending matters, other than litigation or administrative proceedings, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent, and of the attorney's consequent inability to act as an attorney due to disbarment, suspension, or disability- inactive status, and shall advise said clients to seek legal advice elsewhere and to obtain another attorney to complete their pending matters. Even if requested by a client, the attorney may not recommend another attorney to complete a matter. When a new attorney is selected by a client, the disciplined or former attorney shall promptly deliver the file and any other paper or property of the client to the new attorney or to the client if no new attorney is selected, without waiving any right to compensation earned as provided in paragraph (13) below;

(11) shall, except as otherwise provided by paragraph (d) of this rule, as to litigated or administrative proceedings pending in any court or administrative agency, promptly give notice of the suspension, transfer to disability-inactive status, disbarment, or disbarment by consent and of the consequent inability to act as an attorney due to disbarment, suspension, or disability-inactive status, to: (1) each client; (2) the attorney for each adverse party in any matter involving any clients; and (3) the Assignment Judge with respect to any action pending in any court in that vicinage, or the clerk of the appropriate appellate court or administrative agency in which a matter is pending. The notice to clients shall advise them to obtain another attorney and promptly to substitute that attorney for the disciplined or former attorney. Even if requested by a client, the disciplined or former attorney may not recommend an attorney to continue the action. The notices to opposing attorneys and the Assignment Judge or Court Clerk shall clearly indicate the caption and docket number of the case or cases and name and place of residence of each client involved. In the event a client involved in litigation or a pending proceeding does not obtain a substitute attorney within 20 days of the mailing of said notice, the disciplined or former attorney shall move pro se in the court or administrative tribunal in which the action or proceeding is pending for leave to withdraw therefrom. When a client selects a new attorney, the disciplined or former attorney shall promptly deliver the file and any other paper or property of the client to the new attorney or to the client if no attorney is selected, without waiving any right to compensation earned, as provided in paragraph (13), below;

(12) shall, in all cases in which the attorney is then acting, or who thereafter attempts to obtain letters of appointment from a Surrogate to act, in any specified fiduciary capacity, including, but not limited to, executor, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries,

(3) Assignment Judges and Surrogates of any vicinage and county out of which the matter arose, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary;

(13) shall not share in any fee for legal services performed by any other attorney following the disciplined or former attorney's prohibition from practice but may be compensated for the reasonable value of services rendered and disbursements incurred prior to the effective date of the prohibition, provided the attorney has fully complied with the provisions of this rule and has filed the required affidavit of compliance under subparagraph (b)(15). The reasonable value of services for the disciplined or former attorney and the substituted attorney shall not exceed the amount the client would have had to pay had no substitution been required. If an attorney-trustee has been appointed under R. 1:20-19, all fees for legal services and other compensation due the attorney shall be paid solely to the attorney-trustee for disbursement as directed by the court in accordance with the provisions of that rule. Compensation shall include any monies or other thing of value paid for legal services due or that is related to any agreement, sale, assignment or transfer of any aspect of the attorney's share of a law firm;

(14) shall maintain:

(A) files, documents, and other records relating to any matter that was the subject of a disciplinary investigation or proceeding;

(B) files, documents, and other records relating to all terminated matters in which the disciplined or former attorney represented a client prior to the imposition of discipline;

(C) files, documents, and other records of pending matters in which the disciplined or former attorney had responsibility on the date of, or represented a client during the year prior to, the imposition of discipline or resignation;

(D) all financial records related to the disciplined or former attorney's practice of law during the seven years preceding the imposition of discipline, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports; and

(E) all records relating to compliance with this rule.

(15) shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order. Signed copies of that affidavit shall be provided at the same time to the Clerk of the Supreme Court and to the Disciplinary Review Board. The affidavit shall be accompanied by a copy of all correspondence sent pursuant to this rule and shall also set forth the current residence or other address and telephone number of the disciplined or former attorney to which communications may be directed. The disciplined or former

attorney shall thereafter inform the Director of any change in such residence, address, or telephone number. The affidavit shall also set forth whether the attorney-maintained malpractice insurance coverage for the past five years and, for each policy maintained, the name of the carrier, the carrier's address, the policy number, and the dates of coverage. The affidavit shall also attach an alphabetical list of the names, addresses, telephone numbers, and file numbers of all clients whom the attorney represented on the date of discipline or transfer to disability-inactive status.

(c) Failure to Comply. Failure to comply fully and timely with the obligations of this rule and file the affidavit of compliance required by paragraph (b)(15) within the 30-day period, unless extended by the Director for good cause, shall, in the case of a suspension, preclude the Board from considering any petition for reinstatement until the expiration of six months from the date of filing proof of compliance in accordance with R.1:20-21(i)(A). Such failure shall also constitute a violation of RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Director also may file and prosecute an action for contempt pursuant to R. 1:10-2.

(d) Definite Suspension of Six Months or Less. A lawyer who has been suspended for a definite period of six months or less is exempt from the requirements of paragraph (b)(7) and (b)(8).

(e) Responsibility of Partners and Shareholders. An attorney who is affiliated with the disciplined or former attorney as a partner, shareholder, or member shall take reasonable actions to ensure that the attorney complies with this rule. In lieu of compliance by the attorney with the requirement of paragraph (b)(10) and (b)(11), the firm, corporation, or limited liability entity may promptly notify all clients represented by the disciplined or former attorney of the attorney's inability to act due to disbarment, suspension, or disability-inactive status and that the firm will continue to represent the client unless the client requests in writing that the firm withdraw from the matter and substitute a new attorney.

If the disciplined or former attorney fails to comply with this rule within 30 days of the date of suspension, transfer, or disbarment, the law firm shall do so. Proof of compliance shall be by verified affidavit of a member of the firm, shareholder, or member filed with the Director within 30 days of the date of suspension, transfer, or disbarment. The affidavit shall be accompanied by a copy of all notices sent to clients pursuant to this paragraph.

Note: Adopted February 23, 1978, to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; amended July 13, 1994 to be effective September 1, 1994; paragraph (a) was former R. 1:21-8, new paragraphs (b), (c) and (d) adopted January 31, 1995 to be effective March 1, 1995; paragraph (d) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b)(10), (b)(11) and (d) amended, paragraphs (b)(12), (b)(13), and (b)(14) amended and redesignated as paragraphs (b)(13), (b)(14), and (b)(15), and new paragraph (b)(12) adopted July 5, 2000 to be effective September 5, 2000; caption of rule amended, paragraphs (a) and (b) amended, former paragraph (c) redesignated as (d), former paragraph (d) redesignated as (e) and amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(5), (b)(7), and (b)(8) amended July 9, 2008 to be effective September 1, 2008.

ORIGINAL 1995 RULE COMMENTS NOT UPDATED BY COURT TO REFLECT SUBSEQUENT RULE AMENDMENTS

Paragraph (a), which prohibits association with attorneys who have been disciplined by suspension or greater or who are under a disability transfer order, is taken verbatim from existing R.1:21-8 and relocated here. One modification has been made to clarify that prohibited associations involve attorneys who have resigned with prejudice from the bar (a term no longer used and now supplemented by disbarment by consent) and not those who have administratively resigned without prejudice from non-disciplinary purposes. Gender neutral language has also been used.

Paragraph (b) is taken, with some further amplification, from Administrative Guideline No. 23 of the Office of Attorney Ethics. The use of the term resigned attorney has been deleted from paragraph (b) as confusing for those attorneys who resign without prejudice, a non-disciplinary procedure described in proposed R.1:20-22. Any notice obligations imposed on those attorneys will be separately set forth comprehensively in R.1:20-22.

Paragraph (c) has been added. It makes a necessary distinction in requirements between attorneys who have been suspended for a definite time not exceeding six months.

Paragraph (d) has been added. It is taken, with some further amplification, from Administrative Guideline No. 23 of the Office of Attorney Ethics.

ORIGINAL 1995 RULE COMMENTS NOT UPDATED BY COURT TO REFLECT SUBSEQUENT RULE AMENDMENTS

Paragraph (a) of this rule, formerly R. 1:20-12, is amended in three respects. First, it permits the assignment judge to designate another judge to handle the case. This accords with paragraph (c), which permits designation of another judge where an application for instructions is made by the attorney-trustee. Second, the text is amended to accord with the title of the rule by insuring that the primary responsibility of an attorney-trustee is to clients and not to the attorney, whose interests are expressly made a secondary concern. Third, to provide a fund for reimbursement of legal fees and costs in accordance with new paragraph (f), the attorney is given full authority to take possession of the attorney's law practice and marshall any assets. Finally, the paragraph is amended to clarify that the appointment of the attorney-trustee should be made on the local county level from a member of the bar in the vicinage where the attorney's law office is located, which is the current practice. This practice facilitates notification to clients who are able to recover their file at or near the law office of the attorney whose practice has been assumed. The rule also provides that notice of the order of appointment be provided to the appropriate bar association in the vicinage. Paragraph (b) has been amended to make clear that the attorney-trustee must cooperate with a District Ethics Committee or the Office of Attorney Ethics in connection with any disciplinary matter.

A new paragraph (f) is proposed to deal with the issue of compensation (including legal fees and costs) that is justly due to an attorney-trustee. Regardless of the reason for the appointment of an attorney-trustee, it is fair that the attorney (or the attorney's estate) whose practice is benefiting from that appointment should exclusively be responsible for providing reasonable reimbursement for out-of-pocket costs and attorney's fees to the attorney-trustee. The amendment would give the attorney-trustee the full power to marshal the assets of the law practice and to assert absolute priority over any proceeds realized therefrom, subject to a determination of reasonableness by the appointing judge. The rule is not intended to affect any rights of secured creditors.

1:20-7. Additional Rules of Procedure

…

e) Immunity of Disciplinary and Fee Authorities. Members of the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff, shall be absolutely immune from suit, whether legal or equitable in nature, based on their respective conduct in performing their official duties. The Supreme Court shall request the Attorney General to represent disciplinary authorities in all civil or criminal litigation in state or federal courts.

1:21-6. Recordkeeping; Sharing of Fees; Examination of Records

(a) Required Trust and Business Accounts. Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

(1) a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and

(2) a business account into which all funds received for professional services shall be deposited. One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained, and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest-bearing account to an IOLTA account.

(b) Account Location; Financial Institution's Reporting Requirements. An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with

the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non- IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor.

Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by the Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(c) Required Bookkeeping Records.

(1) Attorneys, partnerships of attorneys and professional corporations who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record:

(A) appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects

their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee, and purpose of each disbursement. All trust account receipts shall be deposited intact, and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as stated below or by check payable to a named payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and

(B) an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and

(C) copies of all retainer and compensation agreements with clients; and

(D) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and

(E) copies of all bills rendered to clients; and

(F) copies of all records showing payments to attorneys, investigators, or other persons, not in their regular employ, for services rendered or performed; and

(G) originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and

(H) copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and

(I) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(2) ATM or cash withdrawals from all attorney trust accounts are prohibited.

(3) No attorney trust account shall have any agreement for overdraft protection.

(d) Type and Availability of Bookkeeping Records. The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

(e) Dissolutions. Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.

(f) Attorneys Practicing with Foreign Attorneys or Firms. All of the requirements of this rule shall be applicable to every attorney rendering legal services in this state regardless of whether affiliated with or otherwise related in any way to an attorney, partnership, legal corporation, limited liability company, or limited liability partnership formed or registered in another state.

(g) Attorneys Associated with Out of State Attorneys. An attorney who practices in this state shall maintain and preserve for seven years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.

(h) Availability of Records. Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11 or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.

(i) Disciplinary Action. An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).

(j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners. When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.

Note: Source R.R. 1:12-5A(a) (b) (c). Caption amended and paragraph (d) adopted July 1, 1970 effective immediately; paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended April 2, 1973 to be effective immediately; paragraph (c) amended July 17, 1975 to be effective September 8, 1975; caption and paragraph (a) amended July 29, 1977 to be effective September 6, 1977. Paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraphs (c), (d), (e), (f) and (g) redesignated and amended February 23, 1978 to be effective April 1, 1978; paragraphs (b), (c) and (h) amended November 22, 1978 to be effective January 1, 1979; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b), (c), (g) and (h) amended January 31, 1984 to be effective February 15, 1984 except that the amendments to paragraph (a)(2) regarding designations to be placed on trust and business accounts shall not be effective until July 1, 1984; effective date of amendment to paragraph (a)(2) deferred on June 15, 1984 from July 1, 1984 to September 1, 1984; paragraphs (a)(1) and (2), (e)(1) and (h) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a), (e) and (f) amended November 1, 1984 to be effective March 1, 1985; paragraphs (b) and (c) amended and paragraph (i) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(2) amended September 15, 1992, to be effective January 1, 1993; former paragraph (e) deleted and new paragraph (e) adopted November 18, 1996, to be effective January 1, 1997; paragraph (a) amended, new paragraph (b) added, former paragraphs (b) through (i) redesignated as paragraphs (c) through (j), and redesignated paragraphs (c), (d), (e), (h), and (i) amended July 12, 2002 to be effective September 3, 2002; caption of Rule and paragraphs (a) and (b) amended February 6, 2003 to be effective March 1, 2003; paragraph (c), (e), (f), (g), and (j) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 9, 2008 to be effective September 1, 2008.

1:28-8. Custodial Receivers

Upon approval of the Board of Trustees pursuant to R. 1:28-1(c), the Director or an attorney designated to act on behalf of the Trustees may, upon the occasions set forth below, make application to an appropriate court for the appointment of a custodial receiver to take possession of the property of an attorney, including, but not limited to, property incident to the attorney's law practice. Provided the Trustees first find a reasonable probability that a claim or claims will be presented to the Fund on account of the alleged misconduct of the attorney, such application may be made in any of the following instances:

(a) Where an attorney has been disbarred or suspended by the Supreme Court, or where the attorney's resignation has been accepted by it, with prejudice.

(b) Where the Trustees have received notice that a presentment has been or is about to be submitted against an attorney by a county ethics committee.

(c) Where the Trustees have received notice that a criminal charge, whether by way of indictment or otherwise, has been or is about to be laid against an attorney.

(d) Where an attorney shall admit the existence of defalcations with respect to clients' property, for which defalcations the attorney's misconduct shall have been responsible.

(e) Where credible evidence of such misconduct reaches the Trustees otherwise than as set forth above.

Note: Adopted May 8, 1975, effective immediately; first paragraph amended and last paragraph deleted June 29, 1990 to be effective September 4, 1990; introductory paragraph and paragraphs (a) and (d) amended July 13, 1994 to be effective September 1, 1994.

1:39-6 Effect of Certification

. . .

(d) Division of Fees. A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provisions of this paragraph shall not apply to matrimonial law matters that are referred to certified attorneys.

Appendix C

New Jersey Rules of Professional Conduct

Rules of Court | NJ Courts

Appendix D

Advisory Committee on Professional Ethics Opinions

1. ACPE Opinion 554
2. ACPE Opinion 692
3. ACPE Opinion 692 Supplement

115 N.J.L.J. 565
May 16, 1985

ADVISORY COMMITTEE ON PRO FESSIONAL ETHICS

Appointed by the New Jersey Supreme Court

OPINION 554

Retention of Client's File after

Termination of Employment Relationship

An attorney was engaged to represent on a contingent basis a father, mother, and their son in a personal injury matter.

Suit was filed against two defendants. Interrogatories and depositions were used to get at the facts, and the insurance carrier for the primary defendant offered $15,000 (the limit) for a settlement of the father's claim. This sum was paid into court. No other offers of settlement have been made.

More than two years after the plaintiff's attorney began his representation, he received a letter from another attorney stating that he had been requested to represent the clients above mentioned, and a form of authorization was enclosed directing the original attorney to turn over the contents of his file to the other attorney's office. The new attorney said he would protect any reasonable lien which the original attorney might have as a result of his work product to date. The lien would be paid from any settlement or verdict which might result from the litigation.

The original attorney, by letter, answered that a lot of work had been done, that the attorney for the primary defendant had offered the policy limits of $15,000 on the father's claim, that this sum had been deposited in court, and that counsel for the other defendant had indicated he would entertain a settlement demand for the other claims: He further said:

"With regard to fees, we have agreed that":

1. I am to be reimbursed for all out-of-pocket expenses and the expense of photocopying the file for you.
2. Regarding the father, I will be entitled to a fee of $ 5,000 (based on one-third of the offer of $15,000.00) plus 50% of the attorney fee you generate upon any recovery in excess of $15,000.00 on the father's behalf.
3. Regarding the son and his mother, I will be entitled to a fee of 50% of the attorney's fee you generate attributable to their claim.
4. You will assume responsibility for payment of any expenses relating to this matter.

The new attorney answered, in substance, as follows: I agree to paragraph one and the first half of paragraph two. I refuse the second half of paragraph two, and paragraph three, but I agree to paragraph four."

Thereafter, the new attorney demanded the right to pick up the entire file, and the original attorney offered to give the plaintiffs' and defendants' answers to interrogatories and the original depositions of all parties, and allow the new attorney to review the entire file to indicate any other items he might require to complete his file.

The new attorney insisted on receiving the whole file from the original attorney, but this was refused.

The real question is what is the ethical responsibility of a discharged attorney to his former client and his or her new attorney.

It should be noted that in this case, there is no suggestion that the discharge was based on cause.

RPC 1.16(d) of the Rules of Professional Conduct provides as follows:

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. *The lawyer may retain papers relating to the client to the extent permitted by other law.* (Emphasis added).

The Court in *In re Estate of Poli*, 134 N.J. Super. 222(Cty. Ct. 1975) said that a client has the absolute right to discharge his attorney and terminate the relationship at any time with or without cause.

The Court further said, at page 226:

In summary, we hold that an attorney discharged with or without cause is entitled to the reasonable value of his services rendered to the time of discharge. We further hold that the cause of action to recover compensation for services under a contingent fee contract *does not accrue* until occurrence of the stated contingency.

Cf. *Stein v. Shaw*, 6 NJ 525 (1951). *In Niebuhr v. Sassadeck*, 15 N.J. Misc. 285 (Sup. Ct.),190 A. 783 (1937), aff'd 120 N.J.L. 183 (E&A 1938) the attorney's services were *nearly completed* on his discharge, and therefore *quantum meruit* was held not to be applicable in determining the amount of the fee.

RPC 1.4(a) and 1.15(b), (c), and (d) provide as follows:

> 1.4(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

> 1.15(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

1.15(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

1.15(d) A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.

In our Opinion 445, 104 *N.J.L.J.* 567 (1979), the inquiry was whether an attorney who had been completely paid all outstanding fees could refuse to deliver the client's original file, citing DR 9-102(B) 4 and Opinion 203, 94 *N.J.L.J.* 298 (1971).

In Opinion 203, the ethical question presented was whether a professional corporation might refuse to honor the request of a client to permit one of the withdrawing attorney stockholders to take that client's file with him. The answer was negative, because a client has the right to be represented at all times by counsel of his own choosing. Even if the corporation had not been fully paid, there would be no justification for failing to deliver to the client "*whatever the client was entitled to receive.*"

The question, which has not previously been answered by us, is the meaning of RPC 1.15(b) and (c), which deals with "Safekeeping Property". RPC 1.15(b) says that a lawyer shall promptly deliver to the client or third person any funds or other property that *the client or third* person is *entitled to receive*.

We believe that the client or his new attorney is entitled to receive the file with everything **which** is or was essential for the completion of the litigation.

But who is to pay for the copying of the material?

If the new lawyer asks to review the file and indicates the particular material he needs, it could be promptly copied. This would tend to reduce the cost to him, since he may already have copies of many documents which the original attorney had sent to the client. A demand to take away the file is not fruitful and can be very expensive when the reasonable costs are charged to the new attorney.

We can find no precedent deciding who pays for the copy work. It seems to us that when a client changes attorneys, the burden should rest with the client and his new attorney. Payment of the charges may have to await the outcome of the litigation, but the obligation to pay is created when the copies of the records are made available to the client or his new attorney. The original attorney has a genuine interest in retaining the records and documents for his protection against possible malpractice suits, or an ethical or tax inquiry.

In another related inquiry, an attorney states that for many years past, he represented a husband and wife in their personal and business matters. All matters have been closed and the attorney has been paid. A new attorney has sent said attorney a letter demanding everything in his files.

Is the original attorney obligated to comply with this request?

We believe he must do so but, as previously stated, it is the obligation of the new attorney or his client to pay for the copy work or, if litigation is pending, agree to make payment out of the proceeds of the litigation.

In another related inquiry, the attorney raises three fact situations:

1. An attorney in a matrimonial matter which is pending for judicial determination is discharged or seeks to withdraw. The client asserts that the client's new attorney needs the file to try the matter, but that the client has no money to currently pay the bill (this happens especially when the client is a housewife who expects to pay for legal services out of the proceeds of sale of residence or by court order compelling husband to pay), or that the bill amount is in dispute.

2. An attorney in a contingent fee case is discharged either prior to or after initiating suit but before settlement or judgment.

3. An attorney in a non-court matter is discharged and the amount of the bill is in dispute.

The foregoing Opinion has settled the ethical question, but the related inquiry raises substantive questions which are outside the jurisdiction of this Committee. These questions should be addressed to the Court in which the case is or was pending; and in a non-court matter, the attorney should urge the former client to apply under R. 1:20A for arbitration of the fee dispute. If the former client refuses to do so, the matter will ultimately have to wind up in a court.

163 *N.J.L.J.* 220
January 15, 2001

10 *N.J.L.* 154
January 22, 2001

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS
Appointed by the New Jersey Supreme Court

OPINION 692

Retention of Closed Clients' Files

The Advisory Committee on Professional Ethics has been asked for advice concerning the length of time an attorney must maintain a client file following the final disposition of a matter. For the reasons discussed below, we hold that such portions of the file which constitute "property of the client" must be either returned to the client, disposed of pursuant to court order or agreement with the client , or preserved and maintained for a reasonable period of time following the conclusion of the matter. Absent an express agreement that the file be subject to destruction at an earlier point in time, the client may assume availability of the file up to a date seven years after it has been closed, at which time it may be destroyed. In making this determination, the Committee considered, among other authorities, RPC 1.1 (Competence); RPC 1.4 (Communication); RPC 1.6 (Confidentiality of Information); RPC 1.15 (Safekeeping Property); RPC 8.4 (Misconduct), and R. 1:21-6.

RPC 1.15(a) directs a lawyer to safeguard the property of clients or third persons, and although "complete records of ... account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record,"See footnote 1 [1] neither the Rules of Professional Conduct nor the law of bailment prescribes or delimits the period of time the property itself need be maintained. Rather, RPC 1.15(b) compels the attorney to promptly notify clients or third persons of the receipt of property to which they are entitled and, except as otherwise permitted by law or by agreement with the client, promptly deliver the property to them. This requirement implies that "property" of the client may never be destroyed without the client's permission or some legal authority, such as a court order.

Clearly, that which the client has entrusted to the attorney, such as original documents, photographs or things, remains the "property of the client." Additionally, depending upon the nature of the representation, that which has been created or obtained by the attorney as part of the undertaking and for which the client retained the services of the attorney constitutes property of the client. Original wills, trusts, deeds, executed contracts, corporate bylaws and minutes are but a few examples of documents which constitute client property. See footnote 2 [2]

As to the remainder of the file (correspondence, pleadings, memoranda, briefs, etc.), while some authorities consider most if not all such documents to be "property of the client" and therefore subject to the provisions of RPC 1.15, we see no ethical or practical reason to adopt that broad a definition of "client property" and decline to do so.

We recognize that an attorney may wish to preserve the material for purely business reasons. The potential of further business from the client, the usefulness of the material for similar matters undertaken for others and the protection that may be afforded the attorney should there be a claim of professional malpractice, unethical conduct or a fee dispute are examples of why an attorney may, for such reasons, choose to retain file material. Publications are replete with suggestions on the best practices in that regard. The question posed to this Committee, however, is confined to the ethical constraints, and we therefore present no specific advice with regard to the practical business aspect of the matter. Attorneys are well advised to familiarize themselves with the practical issues and the many suggested means of dealing with them.

Another purpose for which an attorney may choose to preserve closed file material is based upon the duty of professional care arising out of the specific attorney-client relationship. Under such circumstances, the material is maintained not because it is the "property" of the client, but rather because it would be consistent with the professional responsibility of the attorney to anticipate the potential future need for such material by the client. Examples of such material would be medical records which might otherwise become unavailable, financial data obtained which may be useful to establish the basis of an investment for future tax purposes, etc.

Failure to retain a client's closed file will not necessarily result in discipline. Simple negligence does not equate with unethical conduct. Therefore, unless the destruction of the file material constitutes an act of gross negligence or, along with the destruction of other files, a pattern of negligence, RPC 1.1, or misconduct, RPC 8.4(c) and (d), it alone should not be considered an unethical act.

Accordingly, assuming that an attorney's destruction of a client file does not constitute fraud, dishonesty or misrepresentation, and that it is not done purposefully to prejudice the administration of justice, RPC 8.4(c) and (d); does not constitute gross negligence or a pattern of negligence, RPC 1.1; and does not violate the provisions of RPC 1.15 or R. 1:21-6, the destruction of a client file is ethically permissible subject to the admonitions below.

It is well settled that the entire file belongs to the client and must be provided upon request. See footnote 3 [3] *Cf.* Opinion 554, 115 *N.J.L.J.* 565 (1985) (a client or the client's new attorney is entitled to receive the file with everything which is or was essential for the completion of the litigation); Opinion 203, 94 *N.J.L.J.* 298 (1971) (a client has the right to be represented at all times by counsel of the client's choosing and the file should be delivered to the attorney selected by the client). The question presented here, however, deals with the situation where no specific request has been made. Inherent in the attorney-client relationship is an expectation on the part of the client that the attorney may be called upon to and will provide requested information which is necessary to the client's needs. RPC 1.4 (Communication). Therefore, at the close of the file, it is presumed that for some reasonable period of time a client may assume that the entire file would be available if it were requested.

In establishing a fair and reasonable period of time, reference may be made to the *New Jersey Administrative Code* which reflects state policy. See footnote 4 [4] The retention period required by the vast majority of licensed professions is seven years. That being the case, in providing a safe harbor to the attorney who has conformed to the ethical requirements discussed above, we conclude that absent an express agreement to the contrary, the client should not reasonably expect the attorney to retain the file for the client's benefit more than seven years after the conclusion of the representation. See footnote 5 [5] After a period of seven years has passed, such file material may ethically be destroyed.

Additionally, we see no reason why a client may not expressly agree to the destruction of a closed file at any earlier time. A general retention policy adopted by the firm or a specific understanding with regard to retention in the given case may be expressly agreed upon in any one of a number of ways, such as within a retainer agreement or by written acknowledgment at a point in time before or after the file has been closed. If such written agreement is intended to be made applicable to "client property" as defined above, RPC 1.15, the agreement should be executed only after the property is in the attorney's possession and should specifically describe the property intended to be destroyed or otherwise disposed of.

Lastly, the manner in which client files are destroyed must conform to the confidentiality requirements of RPC 1.6. Simply placing the files in the trash would not suffice. Appropriate steps must be taken to ensure that confidential and privileged information remains protected and not available to third parties.

* * *

Footnote: 1 [1]

See also R. 1:21-6(b)(9) which provides that "copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining [to the event which they record]" must be retained for a period of seven years.

Footnote: 2 [2]

Depending on the nature of the representation and the matter, the list of such documents may include appraisals, banking records, real estate and transactional closing documents, employee benefit plans, due diligence documents and reports, governmental authorizations or permits, governmental notices of violations or compliance, policy and procedures manuals, environmental site investigation reports, fiduciary accounting, financial records or statements, insurance policies, lease records, loan documents, securities filings, tax determinations, tax filings or returns, original trademarks, copyrights and patents, etc. This listing is illustrative only and does not serve to limit the types of documents that may be the property of the client.

Footnote: 3 [3]

An exception is data relating solely to the attorney-client relationship and data taken from another unrelated file.

Footnote: 4 [4]

NJAC 13:30-6.5(b) (Medical Examiners - Seven Years) ; NJAC 13:30-8.7(c) (Dentistry - Seven Years); NJAC 13:34-7.1(d) (Marriage and Family Counselors - Seven Years); NJAC 13:34-18.1(g) (Professional Counselors - Seven Years); NJAC 13:33-1.29(a) and 39-7.14(f) (Ophthalmic Dispensers/Ophthalmic Technicians - Six Years); NJAC 13:35-9.11(b) (Acupuncturists - Seven Years); NJAC 13:36-1.8(b) (Mortuary Science - Six Years); NJAC 13:38-2.3(a) (Optometrists

- Seven Years); NJAC 13:39A-3.1(c) (Physical Therapy - Seven Years); NJAC 13:42-8.1(g) (Psychologists - Seven Years); NJAC 13:44-4.9(b) (Veterinarians - Five Years; Three Years if patient has died); NJAC 13:44E-2.2(b) (Chiropractic Examiners - Seven Years); NJAC 13:44F-8.2(a) (Respiratory Care - Seven Years); and NJAC 13:44G- 12.1(e) (Social Worker Examiners - Seven Years).

Footnote: 5 [5]

Although concerned primarily with confidential communications, to the extent that Opinion 542, 114 N.J.L.J. 387 (1984) d eems it appropriate to destroy a file based upon a contract between the insured and the insurance company, it is now here rejected.

11 N.J.L. 2117
170 N.J.L.J. 343
October 28, 2002

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS
Appointed by the New Jersey Supreme Court

OPINION 692 (Supplement)

Retention of Closed Clients' Files

The ACPE has been asked to clarify Opinion 692, in which the Committee responded to a request for advice concerning the length of time an attorney must retain a client file following the final disposition of a matter. There the Committee held that, absent specific instructions or express agreement, and excepting "property of the client," attorneys are required by applicable ethics rules and principles to retain and maintain closed files for seven years. The Committee noted in Opinion 692 that *RPC* 1:15(a)(b) may, by implication, require that "property of the client" be maintained indefinitely. The opinion defined such property as (1) "…that which the client has entrusted to the attorney, such as original documents, photographs, things …" and (2) "…that which has been created or obtained by the attorney as part of the undertaking and for which the client retained the services of the attorney…" By way of example of the latter category, Opinion 692 refers to original wills, trusts, deeds, executed contracts, corporate bylaws and minutes, and, in a footnote, points out that what may be included in this category of property depends on the nature of the representation and the matter. See Opinion 692, fn 2.

The first of the two inquiries before the Committee seeks clarification of Opinion 692 in the following respects:

(a) provision of a more specific explanation of what constitutes "property of the client," including whether medical records, x-rays, expert reports, deposition transcripts, and answers to interrogatories constitute property of the client;

whether the entire file or only that portion falling within the definition of "property of the client" must be retained for seven years; and

whether there must be separate agreements concerning destruction, prior to the expiration of the seven-year period, of the "property of the client" and the remainder of the file.

In responding to this inquiry, the Committee takes this opportunity to provide guidance to the bar on a related issue, namely, (d) who bears the responsibility to retain and maintain closed client files under certain circumstances.

The second inquiry seeks the Committee's clarification in cases where the insurer hires counsel to represent its insured, (e) as between the insurer and an insured, who is the client for purposes of providing instructions on file retention or destruction.

(a) Definition of Property of the Client

As Opinion 692 emphasized, determining what constitutes property of the client is fact sensitive and depends on the nature of the matter and of the representation itself. We note that the definition adopted and examples referenced in Opinion 692 are consistent with definitions adopted and examples used in other states. See, for example, Cal. Standing Comm. on Prof'l Responsibility & Conduct, Formal Opinion 2001-157 (2001) (finding that a lawyer has an obligation to permanently safeguard original materials and materials of inherent value); Mich. Ethics Comm., Opinion R-5 (1989) (requiring record retention plans to include safeguards for permanently maintaining client property such as stock certificates, original wills, and unrecorded deeds); ABA Comm. on Ethics and Prof'l Responsibility, Informal Opinion 1384 (1977) (stressing that a lawyer should not discard or destroy property of the client or information that the client may foreseeably need).

In responding to the current request for clarification, we apply the Opinion 692 definition of "property of the client" and conclude that in most cases, including those involving personal injury or malpractice claims, medical records, x-rays, expert reports, deposition transcripts, and answers to interrogatories do not constitute property of the client. That does not mean, however, that there is no case in which such materials and documents could ultimately fall within the definition of property of the client. It may well be that, depending on the nature of the matter or the representation itself, it would be foreseeable that the former client will need such documents in the future to protect an interest or defend a claim. In such a case, the types of documents specifically referenced in the inquiry (medical records, x-rays, expert reports, deposition transcripts, and answers to interrogatories) could constitute "property of the client" and, as such, be subject to the retention requirement applicable to client property. See Opinion 692 and below. Practitioners will need to apply discretion to these matters on a case-by-case basis.

(b) What Portion of the File Must be Retained for Seven Years

Absent specific written instructions or an express agreement or other legal authority, such as a court order,

1. property of the client must be returned, or retained and maintained indefinitely (see Opinion 692, finding that *R.P.C.* 1.15(b) "implies that 'property' of the client may never be destroyed without the client's permission or some legal authority such as a court order"); and
2. the remainder of the file must be retained and maintained for seven years (*see* Opinion 692, concluding that a client can reasonably expect an attorney to have a file available for seven years after the conclusion of representation). At the end of the seven-year retention period, a lawyer has an obligation to examine the closed file to determine whether it contains property of the client. If a file contains such property, the lawyer should take reasonable steps to notify the former client. Reasonable steps include, but are not limited to, mailing a notice to the client's last known address by regular or certified mail and waiting a reasonable period for a

response. Cf. D.C. Legal Ethics Comm., Opinion 283 (1998) (holding that an attorney must make a reasonable effort to reach the former client by sending a letter to the client's last known address and waiting an appropriate period of time (perhaps six months)). See footnote 1

Some files may contain client property that has inherent value, such as bonds, stocks, or jewelry. Where a file contains inherently valuable property and the client cannot be found at the end of the seven-year retention period, the lawyer should dispose of the property in accordance with New Jersey's Uniform Unclaimed Property Act, *N.J.S.A.* §§ 46:30B-1 to -109.

While the inquiry here at issue did not include a specific question on retention of criminal files, the Committee takes this opportunity to provide guidance to the criminal bar by noting that it will generally not be prudent to dispose of criminal files after seven years. That is because criminal convictions can have significant consequences long after the final judgment, sentencing, and closure of the case. See footnote 2 Thus, absent an express agreement, a lawyer should not discard or destroy files relating to criminal matters while the client is alive. See footnote 3 Accord, State Bar of Cal. Standing Comm. on Prof'l Responsibility and Conduct, Opinion 2001-157 (2001) (holding that client files in criminal cases cannot be destroyed without the client's authorization while the client is alive).

Finally, we emphasize again that practitioners must use their judgment and apply discretion, and must consult substantive law requirements in particular practice areas to determine the appropriate retention period beyond the required seven years for files or portions of files in certain matters. For example, where the matter involves a minor, materials in the file may affect the client's rights well beyond the seven-year retention period. See, for example, *N.J.S.A.* § 2A:14-21 (providing that the statute of limitations for claims brought by minors tolls until the minor reaches majority). Thus, a lawyer may need to retain file records relating to the representation of a minor until the minor reaches majority and thereafter until the statute of limitations runs. Cf. D.C. Legal Ethics Comm., Opinion 283, fn. 10 (1998) (explaining that files relating to matters involving a minor may need to be kept beyond the minimum five-year retention period established in that jurisdiction). *See also N.J.S.A.* § 2A:14-7 (providing for a twenty year statute of limitations for actions relating to real estate). Other extended retention requirements may apply by operation of state and federal laws that require particular information to be retained for more than seven years. While these requirements may not specifically apply to attorneys, to the extent an attorney has these types of records in a client file, and absent an agreement with the client, the attorney may be required to maintain them for the period specified in the applicable law. *See*, for example, 29 *U.S.C.* § 1059 (a)(1) (ERISA) (requiring indefinite retention of documents essential to the determination of benefits payable to employees); 29 C.F.R. § 1910.1020(d) (OSHA) (requiring that medical records pertaining to an employee's exposure to toxic or hazardous substances in the workplace be retained for the duration of employment plus thirty years).

Before destruction, whether based on the client's consent or at the end of the seven-year retention period, the attorney should carefully review the file's contents to make certain that documents that the lawyer is required by law to maintain or that the client may foreseeably need are not destroyed. Once again, the Committee notes that counsel must exercise reasonable discretion in these matters, based upon the particular facts, and as may be required by applicable law.

As Opinion 692 emphasized, when destroying client files, the manner in which they are destroyed must conform to the confidentiality requirements of *RPC* 1.6. *See* Opinion 692 (stressing that "simply placing the files in the trash would not suffice"). Accordingly, a lawyer must take appropriate measures to ensure that confidential and privileged information remains protected from improper disclosure.

(c) Agreements to Destroy Client Property

The inquirer has asked for clarification whether there must be separate agreements concerning destruction of property of the client in less than seven years. Specifically, the inquirer seeks guidance whether, in the case where there is a general agreement with the client on the destruction of the entire file (in a retainer agreement or otherwise), a specific agreement is required for the destruction of "property of the client" that may be contained in the file.

As Opinion 692 makes clear, an agreement to destroy property of the client should be executed only after the property is in the attorney's possession, and should specifically describe the property intended to be destroyed or otherwise disposed of. *See* Opinion 692 (holding that if a general retention policy calling for the destruction of a closed file "is intended to be made applicable to 'client property' . . . the agreement should be executed only after the property is in the attorney's possession"). Therefore, unless the attorney is in possession of the client property before a retainer agreement is signed, generally an agreement to destroy a file contained in a retainer agreement is insufficient to permit destruction of client property.

(d) Responsibility For Retention and Maintenance of Closed Client Files Under Certain Circumstances

From time to time the Committee has been asked for guidance on the question of who has responsibility for the retention and maintenance of client files, including property of the client, in circumstances where a sole practitioner retires or dies, the attorney who worked on the matter leaves the firm, or when the firm dissolves. The Committee takes this opportunity to provide guidance to the bar on this issue.

Ordinarily, clients of a law firm employ the firm as an entity rather than employing a particular member of the firm. See *State v. Belluci, 81 N.J.* 531, 541 (1980) (reasoning that the access to confidential information among members of a firm and the shared economic interest of the entire firm support "treating a partnership as one attorney"); *Staron v. Weinstein, 305 N.J. Super.* 236, 242 (App. Div. 1997) ("When a client retains a lawyer [associated with a law firm] the lawyer's firm assumes the authority and responsibility of representing that client, unless the circumstances indicate otherwise . . . .") (citing Restatement (Third) of Law Governing Lawyers § 26, cmt. h (Proposed Final Draft No. 1, 1996)). Accordingly, under RPC 1.16, a law firm has an ethical obligation to protect the interests of former clients. Where a client employs a firm, it is the firm that has the obligation to comply with the procedures for disposition of client files set forth in Opinion 692 as clarified in this opinion. See N.Y. State Bar Assoc. Comm. Prof'l Ethics, Opinion 623 (1991) (holding that a law firm, and not just the member of the firm who actively represented a client, has a professional obligation to maintain that client's closed files). Likewise, in the event that a firm dissolves, the former partners or members of the firm have a professional and ethical obligation to make arrangements for the disposition of client property in a manner consistent with this opinion and Opinion 692. This requirement conforms

with the ethical obligations imposed on many of New Jersey's licensed professionals to establish procedures for retrieval of records following the cessation of their practices. See, for example, *N.J.A.C.* 13:30-8.7(f) (Dentists); *N.J.A.C.* 13:35-6.5(h) (Physicians); *N.J.A.C.* 13:42-8.1(h) (Psychologists); *N.J.A.C.* 13:44E-2.2(g) (Chiropractors).

Under *RPC* 1.3, a sole practitioner has an ethical duty to plan for disposition of files in the event of his/her death or retirement. See Model Rules of Prof'l Conduct R. 1.3 cmt. 5 (amended 2002) ("To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action."); ABA Comm. on Ethics and Professional Responsibility, Formal Opinion 92-369 (1992) (noting that the Model Rules on diligence and competence require a sole practitioner to plan for death); Fl. State Bar Assoc. Comm. of Prof'l Ethics, Opinion 81-8 (1981) (holding that when planning for death, a lawyer must make a diligent effort to contact all clients, review each file for documents that must be safeguarded, and index such documents before putting them in storage or turning them over to the attorney who assumes control of the practice). *RPC* 1.3 specifically requires a lawyer to act "with reasonable diligence and promptness in representing a client." We conclude that "reasonable diligence" requires a sole practitioner to make arrangements for disposition of client files in the event of death or retirement. This is an obligation which all law firms and sole practitioners must prepare for now.

When a sole practitioner has not arranged for file disposition in the event of death or disability, New Jersey Court Rule 1:20-19 provides for the disposition of the practice, including client files See footnote 4. Pursuant to Rule 1:20-19, an interested party may petition the Assignment Judge in the vicinage where the attorney maintained a practice to appoint a member of the bar to perform an inventory of the practitioner's files and take actions necessary for the protection of the attorney's clients. N.J. Ct. *R.* 1:20-19(a). *Cf.* Model Rules for Lawyer Disciplinary Enforcement, 28 (1989). When dealing with retention and disposition of client files and client property, the appointed attorney must comply with the seven-year time period established in Opinion 692 and clarified in this opinion. *See* ABA Comm. on Ethics and Professional Responsibility, Formal Opinion 92-369 (1992) (concluding that ABA Informal Opinion 1384 regarding the duty to preserve client files applies to lawyers who assume responsibility for a deceased practitioner's clients).

(e) As Between the Insurer and the Insured, who is the Client for Purposes of Complying with the Requirements set forth in Opinion 692, as Clarified Herein

Concerns about the disposition of closed client files multiply in the conflict-ridden tripartite relationship among a law firm, an insurance company, and the insured party. Based on *RPC* 1.6 and 1.8 and legal precedent, the Committee reaffirms that the insured, and not the insurer, is the client for the purposes addressed in this opinion and in Opinion 692. To the extent that Opinion 542 conflicts with this holding, we now reject it.

In Opinion 542, we addressed whether an attorney for an insured breached his duty of confidentiality by delivering closed files to the insurer without retaining copies. N.J. Advisory Comm. on Prof'l Ethics, Opinion

542 (1984). We explained that the insured and insurer could agree to the disposition of claims files. However, we emphasized that the attorney must return all materials unrelated to the claims at issue to the insured, unless the insured authorized other means of disposal. Although we held that the attorney's procedure described in that inquiry for disposing of claims files was proper, we limited our response to files that contained no confidences of the insured. Opinion 542 did not address whether the attorney's duty to safeguard client property limited the attorney's ability to transfer the entire claims file to the insurer. However, to the extent that Opinion 542 does permit destruction of a file based on a contract between the insured and the insurance company, it is rejected.

Although this is an issue of first impression in New Jersey, prior decisions regarding the relationship between the attorney, an insurance carrier, and the insured support a finding that the file and all "client property" belong to the insured. See footnote 5 In New Jersey, courts have concluded that an attorney's primary duty is to the insured. Prevratil v. *Mohr*, 145 N.J. 180, 194 (1996); *Lieberman v. Employers Ins. of Wausau*, 84 *N.J.* 325, 338 (1980) (emphasizing that the relationship between defense counsel and the insured should be treated as if the insured had hired and paid for the attorney's services); *Montanez v. Irizzary-Rodriquez*, 273 N.J. *Super*. 276, 286 (App. Div. 1994) (concluding that defense counsel cannot ethically attack the credibility of the insured given the undivided loyalty that the attorney owes to the insured); *Longo v. Am. Policyholders' Ins. Co.*, 181 *N.J. Super.* 87, 92 (App. Div. 1981) (holding that an attorney has an ethical obligation to represent the insured with undivided loyalty); N.J. Advisory Comm. on Prof'l Ethics, Opinion 542 (1984) ("We first observe that in the situation where an attorney is employed by an insurance company to represent the interests of the insured party to an action, that attorney's client is the insured."). Similarly, the New Jersey Supreme Court has held that an attorney owes undivided loyalty to the insured. *Lieberman, supra*, 84 *N.J.* at 338-39. Based on the existence of an attorney-client relationship between the attorney and the insured, the *Lieberman* Court stressed that "there is no diminishment of ethical obligations and standard of care applicable to insurance defense counsel." *Id*. Accordingly, as a baseline, the attorney owes all ethical obligations, including the obligations to safeguard client property and protect client interests, to the insured and not the insurer.

RPC 1.8, Conflict of Interest, makes clear that an attorney has an ethical obligation to preserve the insured's confidentiality. Pursuant to RPC 1.8, an attorney can only accept compensation from a third party if "there is no interference with the lawyer's independence of judgment or with the lawyer-client relationship," and the client's confidential information is protected. *See also* Restatement of the Law (Third) Governing Lawyers § 134, ill. e (2000) (directing an attorney to maintain the confidentiality of the insured). Documents that an insured delivers to the attorney in the course of representation, such as medical records or financial statements, constitute "property of the client" as that term is defined in Opinion 692 and clarified in this Opinion. These materials may contain client confidences that, under RPC 1.8, cannot be disclosed to the insurance carrier without the informed consent of the insured. Therefore, concerns over maintaining client confidences support a finding that the insurer cannot control the disposition of closed client files.

Because the attorney's employment by the insurer does not limit the attorney's ethical obligations to the insured, the Committee holds that materials contained in a claims file that clearly fall within the meaning of "property of the client" must be disposed of in accordance with the insured's instructions, or maintained indefinitely under RPC 1.15(b). The insured may consent to the destruction or retention of a claims file by the insurer, but such consent must be fully informed. Therefore, the insured must be aware of the materials contained in the file at the time the insured gives consent. See *In re Rules of Prof'l Conduct and Insurer Imposed Billing Rules and Procedures*, 299 Mont.

321, 346-47 (2000) ("[F]or an insured to make fully informed consent to disclosure of detailed professional billing statements, the consent must be contemporaneous with the facts and the circumstances of which the insured should be aware."). Accordingly, in most cases, an insured may not consent to disposal of client property by way of a provision to that effect in a liability policy executed before any claims materialize.

In sum, legal precedent in this State makes clear that the insured is the client of the attorney, even where the insurance carrier hires and pays for the attorney's services. All resulting ethical obligations, including the obligation to retain closed client files and property of the client, apply to the insured. Thus, the Committee concludes that, where a claims file contains materials delivered by the insured to the attorney or prepared or obtained for the insured in the course of representation, the attorney must obtain the insured's instructions or consent regarding the disposition of the property in accordance with Opinion 692 and this opinion.

Footnote: 1 The New Jersey Administrative Code provisions regulating other licensed professionals provide guidance on the scope of "reasonable efforts." Pursuant to the Code, when preparing to retire or terminate their practices, psychologists, chiropractors, dentists, and physicians must establish procedures by which patients may obtain treatment records. See N.J.A.C. 13:30-8.7(h) (Dentists); N.J.A.C. 13:35-6.5(h) (Physicians); N.J.A.C. 13:42-8.1(h) (Psychologists); N.J.A.C. 13:44E-2.2(g) (Chiropractors). These procedures and a notice of cessation of the practice must be published in "a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation." Id.

Footnote: 2 See, for example, N.J.S.A. § 2C:7-2 (providing that a registered sex offender who has not committed an offense within fifteen years after conviction or release, whichever is later, can apply for termination of the registration obligation); N.J.S.A. § 2C:43-7.1 (authorizing extended sentencing for repeat violent offenders).

Footnote: 3 The New Jersey Public Defender maintains files for 50 years pursuant to a departmental policy that was approved by the State Records Committee pursuant to N.J.S.A. § 47:3-20 in 1983.

Footnote: 4 The Court Rule alternative is unlikely to be as practical and effective as advance planning by the responsible firm or practitioner.

Footnote: 5 Neither the courts nor the legislature in this State has addressed whether the insured and the insurer are, in some circumstances, both clients of the attorney. See Paradigm Ins. Co. v. Langerman Law Offices, 200 Ariz. 146, 154 (2001) (holding that "when an insurer assigns an attorney to represent an insured, the lawyer has a duty to the insurer arising from the understanding that the lawyer's services are ordinarily intended to benefit both insurer and insured when their interests coincide"). Because we find that this is a question of substantive law, we do not address it. See N.J. Ct. R. 1:19-2 (granting the Committee jurisdiction over inquiries concerning the proper conduct for members of the New Jersey bar). However, if, in the future, the courts or legislature determine that an attorney owes a duty of loyalty to both the insurer and the insured, the Committee will have to revisit the question of retention and destruction of the insured client's files and property.

Appendix E

Random Audit Compliance Program Outline of Recordkeeping Requirements Under RPC 1.15 and R. 1:21-6

(viewable at:
https://www.njcourts.gov/sites/default/files/attorneys/office-of-attorney-ethics/oaeoutline.pdf).

PUBLISHED BY:
Office of Attorney Ethics
Supreme Court of New Jersey

March 2017

Second Edition Updated August 2024