

**HANDBOOK FOR A RECEIVER OF THE
LAW PRACTICE OF A DISABLED OR MISSING OR
DECEASED (“DMD”) MAINE ATTORNEY**

By Authority of Maine Bar Rule 7.3(f)

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Law Practice of a Disabled or Missing or
Deceased (“DMD”) Maine Attorney

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Handbook for a Receiver of the
Law Practice of a Disabled or Missing or
Deceased (“DMD”) Maine Attorney

Introduction

This handbook is designed to assist an attorney who is appointed as the Receiver of the law practice of a disabled, missing or deceased Maine attorney (hereafter, “DMD”) , under M. Bar. R. 7.3(f). While no single document or checklist can answer every question that a Receiver will encounter, this handbook attempts to address the essential responsibilities and procedures that will shape the process of the receivership. Included in this handbook are procedural checklists and sample forms to assist the Receiver in the execution of his or her duties.

In many cases, questions will arise for which this handbook provides no answer. In those cases, receivers are encouraged to contact Bar Counsel at the Maine Board of Overseers of the Bar (hereafter, “BOB”) by email at board@mebaroverseers.org or by phone at (207) 623-1121.

The BOB greatly appreciates the service that Receivers render to the public and the profession by ensuring the orderly winding down of the law practice of a DMD.

When Should a Receiver Be Appointed?

The Maine Supreme Judicial Court may appoint a Receiver to protect the interests of clients of any Maine attorney who “...is incapacitated, or disabled or missing or dies and no partner, executor or other responsible person capable of conducting the attorney's affairs is known to exist...” M. Bar R. 7.3(f)(1).

Appointment of a Receiver is usually not necessary if a DMD has a partner or associate who is willing and able to protect the interests of the DMD and his or her clients. In such a case, the partner or associate is ordinarily able to handle the situation without a formal court order appointing a Receiver of the DMD’s law practice.

An attorney can be found “incapacitated” when he or she “... has been judicially declared incompetent, or acquitted of a crime by reason of mental illness, or committed to a mental hospital after a judicial hearing, or where an attorney has been placed by court order under guardianship or conservatorship...” M. Bar R. 7.3(e)(1). Another cause of incapacity leading to appointment of a Receiver can be “... addiction to drugs or intoxicants.” M. Bar R. 7.3(e)(2)(A).

An attorney can be found to be “missing” for purposes of appointing a Receiver to dissolve his or her law practice when that attorney has been unavailable to attend to the needs of his or her client(s) for a period beyond what is reasonable and customary to the practice of law and/or by conduct has demonstrated that he or she is unlikely properly to discharge his or her professional duties in the future.

An attorney will be considered deceased when a valid death certificate or other reliable evidence of death is presented to the court considering the appointment of a Receiver.

The order appointing a Receiver can provide the Receiver a range of authority including: the authority to enter the DMD’s office, to review confidential client materials, to copy client files, to contact clients, to return and/or retain open and closed client files, to manage and disburse the DMD’s trust accounts, and to manage and make disbursements from the DMD’s office accounts.

Thoughtful advance planning can eliminate the need for the appointment of a Receiver entirely. This type of planning is an essential part of responsible law practice and should address all the foreseeable needs of a practice suddenly left untended. See Ethics Commission Opinion #143 (Appendix B)

Anyone learning an attorney has died or has become incapacitated or disabled, should discuss the matter with Bar Counsel to determine if a Receiver is advisable to protect the DMD’s clients.

Appointment of the Receiver

1. Selecting a Receiver

Any attorney who practices in the DMD’s geographic region, is a member of the Maine bar in good standing and is willing to perform the duties of a Receiver is eligible for appointment. The Receiver need not have the same kind of practice as the DMD. Depending upon the amount of work to be done, it may, in extraordinary instances, be optimal to have two Receivers appointed.

2. Filing the Petition

- **A Sample Petition for Order Appointing a Receiver are included in Appendix A, Pages 14 (deceased), 17 (missing) & 20 (disabled).**

The petition should be addressed to the Maine Supreme Judicial Court. It should include the name of the proposed Receiver, a statement of the

grounds necessitating appointment of a Receiver and a request for broad and general authority as well as any foreseeable specific authority that may be required by the Receiver for the orderly dissolution of the DMD's practice. As circumstances unfold, it may become necessary to seek supplemental orders granting additional authority to address unique issues.

While there is no specific guidance on service in the bar rules, consideration should be given to broad concepts of due process and care should be taken to serve notice on, or attempt to give notice to the missing or disabled DMD. In those instances where the DMD is deceased, the Personal Representative of his or her estate should be provided notice of all proceedings.

3. The Order

- **A sample Order Appointing a Receiver is included in Appendix A, Page 26.**

The Chief Justice of the Supreme Judicial Court will assign the petition requesting the appointment of a Receiver to a single Justice for review. The petition may be granted without a hearing. The Receiver will serve until released by order of the Court.

Duties of the Receiver

1. Introduction

The duties of a Receiver of the practice of a DMD can vary widely. The Receiver need not attend to all details personally. The order of the Court will usually allow, at the Receiver's discretion, the hiring of appropriate trade professionals (movers, bookkeepers, administrative assistants) as may be needed to most efficiently and cost effectively expedite the Receiver's completion of the work.

2. Getting Access to the Office & Client Files

After the Order of Appointment is signed, the Receiver should immediately secure or confirm the security of the files of the DMD's clients. Relatives of the DMD, a secretary or personal representative of the estate can usually provide the Receiver with a key and access to the DMD's office. In rare cases a Receiver has been forced to seek a court order authorizing the Receiver to gain access to the DMD's law office with the help of a locksmith.

3. Reviewing Client Files

- **A Sample Inventory of Client Files is included in Appendix A, Page 31.**

Once in possession of the DMD's client files, the Receiver's first priority should be to review the DMD's client files and determine which are active and which are closed. Once the active files have been identified and added to the master file inventory, the Receiver should move quickly to notify the clients associated with these files that they should retrieve their documents and select new counsel to represent them (see below, Contacting Clients, p. 4). The active files are the obvious file inventory priority given the potential for looming deadlines inherent in active matters.

Once the urgent matters associated with DMD's client files have been addressed, the Receiver should expand the master inventory to include closed client files. In its final form, the final master inventory should detail which files have been claimed and returned and which files contain documents of intrinsic value (see below). The master inventory will ultimately be attached to the petition seeking discharge of the Receiver when the winding down of the DMD's practice is complete.

At the time of initial review it is critical that the Receiver determine which files contain documents of intrinsic value and which files are of a variety subject to confidential destruction at some later date. (see Ethics Commission Opinion #187 in Appendix B and M. Bar R. 3.4(a)(4).) This step will be critical when delivering the unclaimed files to the primary caretaker. It must be very clear which of the client files will eventually be eligible for destruction and these files should be separated from those files containing documents of intrinsic value.

4. Contacting Clients

- **A sample Notice to Clients letter is included in Appendix A, Page 32 (deceased) & 34 (missing or disabled).**
- **A sample Notice to Clients – Newspaper Ad is included in Appendix A, Page 36.**

After completing the inventory of open and closed files, the Receiver should contact each client who has an active matter pending and notify them that the DMD is no longer able to handle the client's case. The client should be advised to act as soon as possible to select another attorney and to make arrangements to pick up his or her file. Clients with cases in litigation for which the DMD had been retained should be notified that they should contact

the court clerk and that they will be treated as *pro se* until successor counsel is retained. Clients with cases in litigation for which the DMD was court appointed counsel should be advised to request successor counsel from the court clerk.

In the case of closed files, the Receiver should identify those closed in the previous eight years and attempt to contact these clients directly to retrieve their file(s). Files closed and held by the DMD beyond the eight years usually will not require direct contact with the client and notification by advertisement in a locally circulated newspaper will usually be sufficient.

5. Protecting the Clients' Interests

While the established time period for clients to select a new attorney and retrieve their files is passing (see above, Contacting Clients, p. 4), the Receiver may need to address existing procedural deadlines. When necessary, a Receiver should notify the courts or other forums where client matters are pending. In many cases, the court clerk or other administrator will be able to bring calendar issues to the attention of the presiding judge for *sua sponte* relief. The Receiver should not enter an appearance or act as attorney for the DMD's clients or provide legal services. The Receiver should take whatever other steps are necessary to prevent harm to the DMD's clients until they obtain successor counsel.

6. Copying Files

The Receiver, at his or her discretion, may choose to make photocopies of certain files before the original contents are returned to the client. There may, however, be financial and practical limitations that prevent large-scale copying efforts. A Receiver who has questions about whether copies of records from a file should be made in a specific situation should call the BOB for guidance. If copies of file materials are made, the cost must be charged to the DMD or the estate of the DMD, rather than to the client (see Ethics Commission Opinions #51, #74 #120 and #187 in Appendix B).

7. Delivering Files to Clients

- **A sample Client File Release Form is included in Appendix A, Page 37.**

Professional Ethics Commission Opinion # 187 should provide the Receiver guidance as to which materials are appropriate for release to the client. The files must be made available to clients even if clients have not paid the DMD or the DMD's estate for work done. (Again, see Opinion #51, #74, #120 and #187 in Appendix B.)

When the DMD's clients pick up their files, the Receiver should ask each client to sign a release, indicating that the file has been received. The Receiver 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 tell clients in the initial notification letter how the files will be returned and the reason for the security measures.

Client files can be returned by certified mail and/or sent "collect" only with the client's consent. The Receiver should keep proof of delivery of the file. As mailing files to the DMD's clients can be expensive, Receivers are encouraged to have clients pick up files in person if possible.

8. Recommending New Attorneys

Often, the DMD's clients will ask the Receiver to recommend successor counsel. The Receiver should feel free to make recommendations, so long as it is made clear that the selection of successor counsel is up to the client. Occasionally, local bar members may agree to complete the DMD's pending matters at no additional charge to the clients or at a rate agreed to by the DMD. The Receiver may also agree to serve as the attorney for a client of the DMD, although the Receiver is not required to do so. Prior to assuming representation of the DMD's client, the Receiver should inform the client in writing that the client is free to employ any attorney and that the Court's appointment of a Receiver in no way mandates that the client employ the Receiver. In some instances, it may be imprudent for the Receiver to represent DMD clients and any such representation should be undertaken only after careful deliberation. No client file should be sent to a successor attorney without the client's prior written authorization.

9. Finding a File Caretaker

- **A sample Letter of Instructions to Client File Caretaker is included in Appendix A, Page 45.**

In most cases the return of all files to clients will not be possible. In the end, some number of files are likely to remain thus requiring some arrangement of long-term storage and maintenance. The Receiver will need to create a plan to address the issues inherent in long-term storage of files containing valuable client information and unique, original or otherwise intrinsically valuable documents. This plan should be included in the Receiver's Petition for Discharge so that it can be formalized in the order of the court.

The key to any long-term storage plan is identifying potential caretakers for the unclaimed client files. Ideally, the primary caretaker will be a Maine

attorney. If no attorney is available or willing it may be that the only able and willing file caretaker will be a spouse or family member of the DMD. A good candidate will be someone with the means to properly store the materials and the ability to follow the instructions of the Receiver as to the final disposition of the various files. The primary caretaker should take possession of unclaimed files only after the Receiver has been discharged from his or her duties and the Receiver's plan for long-term storage approved by the Court.

It is equally important that a second file caretaker be identified. If the primary file caretaker is unable to execute his or her duties at some future point (e.g., death or disability), the file storage responsibility must be assumed by someone able to ensure the continued confidentiality of the files. It is possible that this second caretaker could be another family member of the DMD. More likely, and preferably the second caretaker will be a Maine attorney and, in some instances, the Receiver may choose to volunteer for this duty. As the majority of remaining files are likely to be those containing intrinsically valuable documents, it is preferable for the second caretaker to be an organization that can provide the open-ended storage customary with these types of documents. In most cases, the second caretaker will only be called upon to take possession of the documents sometime after the destructible files have been disposed of and all that remains are a small number of permanent files.

Once identified, the Receiver should carefully explain, in writing, to the primary caretaker the various elements of archiving the DMD's files. Of particular importance will be those procedures involving the release of client files to future claimants and the ultimate disposition of unclaimed client files.

After receiving the Court's approval of the Receiver's plan for long-term storage, the Receiver should deliver to the caretaker the unclaimed files and binder containing relevant file inventories, Client File Releases for all delivered files, the proper procedure for releasing client files to future claimants, a copy of the Letter of Instruction and empty Client File Release forms. This binder should contain everything the caretaker will need to properly track the ultimate disposition of all the files.

The Receiver will need carefully to explain to the caretaker that all the files should be held intact and available to former clients for a minimum of eight years after the closing of the DMD's practice. While it is possible that some files could be destroyed prior to the eight years, it simplifies the process for both the Receiver and the caretaker to distill the maintenance plan to two types of file disposition: those files eligible for destruction in eight years and those that are not. Files containing documents of intrinsic value should be clearly marked and their disqualification for confidential destruction should be noted prominently on the storage container(s). Files that may be confidentially destroyed at some future time should also be clearly identified. Detailed

instructions for the confidential destruction of files should be included on the caretaker binder so that, when timely, the files will be properly disposed of. Finally, the Receiver should assist the primary caretaker in planning the orderly transfer of the remaining files to the secondary caretaker at such time that the primary caretaker is no longer able to care for them.

The file caretaker need not keep the DMD client files in their original storage location (usually the DMD office) and may choose to move the files to a more convenient and cost-effective location (e.g., their home or a commercial storage unit).

It may be necessary for the Receiver to address the contents of electronic files on office equipment. Regardless of whether this is equipment is being transferred to a new owner or is slated for disposal, the electronic files must first be preserved to a durable storage format and wiped from the equipment's memory. In these instances it may be best to hire a specialist to transfer the data to a durable storage media and ensure that no residue of confidential information is left behind on the office equipment. The data record should be cataloged and the care of both the catalog and the storage media should be addressed in the Letter of Instruction to the file caretaker. The catalog and storage media should remain with the files when they are delivered to the caretaker.

10. Dealing with the DMD's Office Account

Ordinarily, the Receiver will have various duties regarding the DMD's office or business account. If a Receiver anticipates that the office account will be required to pay existing employees to assist in winding down the practice, or if the office account is to be utilized to pay certain administrative and overhead expenses, the petitioner should request authority for the Receiver to access these funds in the original petition for appointment.

Clients who believe that they are owed a refund of fees that may be in any office account should be encouraged to seek independent legal counsel to resolve those matters. The Receiver should not act as an advocate for the clients in fee dispute matters. Similarly, the Receiver is not obligated to take extraordinary steps to collect fees owed to the DMD.

11. Dealing with the DMD's Trust Account

- **A sample Petition for Order to Disburse Client Funds is included in Appendix A, Page 38.**
- **A sample Proposed Order to Disburse Client Funds is included in Appendix A, Page 41.**

Receivers often have duties relating to disposition of funds in the DMD's trust accounts. Pursuant to M. Bar R. 3.6(e)(1), the DMD's trust account should contain only client funds and a minimal amount to cover bank service charges.

The Receiver should first review the DMD's trust account record, reconcile the monthly bank statements and bring individual client ledgers up to date. If the DMD had a secretary or bookkeeper, this individual is often able to perform most of the auditing tasks for the Receiver. In those instances where the complexity or condition of the financial records exceeds the expertise of the Receiver, outside accounting assistance should be considered. This is especially true where the condition of the financial records suggests that errors or inconsistencies may exist.

After the Receiver determines the ownership of the funds in the DMD's trust account, the Receiver should file a petition, requesting the court to authorize the Receiver to disburse funds to the client-owners. For the protection of the Receiver, it is necessary to seek separate court approval prior to making any disbursements from the trust account. If for any reason there is not enough on deposit in the trust account to pay all claims, the Receiver should attempt to formulate a plan for the distribution of these funds and submit this plan as part of the petition to the Court for approval. In these cases, clients who have a claim against funds in the DMD's trust account should be given notice and the opportunity to be heard on the petition to adopt the Receiver's trust account disbursement plan.

Compensation for Services as a Receiver

- **A sample Notice of Appointment to Personal Representative is included in Appendix A, Page 29.**
- **A sample Notice of Appointment to DMD Attorney is included in Appendix A, Page 30.**

Acting as Receiver of a DMD's law practice can be time consuming. In all cases, the Receiver should keep track of both his or her own time and time spent by clerical staff. Any expenses incurred in winding down the DMD's practice should also be recorded.

The court can award payment of counsel fees to a Receiver appointed to wind down the practice of a deceased attorney. In the case of a deceased attorney, these fees may be paid from the deceased attorney's estate and should be considered an administrative expense of the estate. Notice of the Receiver's pendant claim against the estate of the DMD should be provided to

the Personal Representative, if one has been appointed, as soon as possible after the Order of Appointment is entered.

In the case of a disabled attorney, it may be possible to collect a modest fee directly from the disabled attorney or in the case of a missing attorney, the court may award fees from the ascertainable assets of the missing attorney. Notice of the Receiver's pendant claim against the DMD Attorney should be provided soon as possible after the Order of Appointment is entered.

Reporting to the Court & Discharge

- **A sample Petition for Order Discharging Receiver is included in Appendix A, Page 48.**
- **A sample Report of Receiver is included in Appendix A, Page 52.**
- **A sample Proposed Order Discharging Receiver is included in Appendix A, Page 55.**

The Receiver's last duty is to report his or her activities to the court and file a petition to be discharged as Receiver of the DMD's practice. The contents of the petition will vary, depending upon the services performed by the Receiver. At a minimum, the petition should contain a list of files distributed to the clients and a detail of the plan for the storage and destruction of unclaimed files. If trust or office funds were disbursed, a record of the disbursements should be included. After the Receiver is discharged, he or she should provide a signed copy of the Order of Discharge to Bar Counsel at The BOB. If the DMD is known to have practiced in other jurisdictions, a copy of the Order of Discharge should be provided to the bar governance agency of that jurisdiction.

Conclusion

Acting as Receiver of the practice of a missing, incapacitated, deceased or disabled lawyer is the rendering of a great service to the public and to the Maine bar. Each Receiver's experience is unique and it is impossible to answer every question ahead of time. Every Receiver should feel free to email or telephone Bar Counsel at The BOB any time a question or problem arises.

CHECKLIST OF DUTIES
FOR THE RECEIVER OF THE LAW PRACTICE OF A
DECEASED, MISSING OR DISABLED ATTORNEY

1. Enter DMD's law office and secure client files. (See Handbook p. 3.)
2. Inventory the files to determine which are active and which contain documents of intrinsic value. At the time of discharge, the master file inventory should also reflect which files remain unclaimed. (See Handbook p. 4 and Form – Sample Inventory of Client Files on p. 31.)
3. Phone and/or send a letter to each client who has an open client file with the DMD. The client should be notified of the need to retain substitute counsel and to retrieve the file without delay. Keep records of how and to whom the files are distributed. (See Handbook p. 4 and Forms – Notice to Clients (deceased) on p. 32 and Notice to Clients (missing or disabled) on p. 34.)
4. Take steps to preserve rights of clients while the client is arranging for substitute counsel. Often, contacting the appropriate court clerk will result in *sua sponte* relief. (See Handbook p. 5)
5. For client files closed in the preceding eight years, attempt direct notice by phone or letter.
6. Place a newspaper advertisement advising all present and former clients that the DMD practice is winding down. The advertisement should explain when, where and how to retrieve files. Keep records of how and to whom the files are distributed. (See Handbook p. 4 and Forms – Notice to Clients – Newspaper Ad on p.36.)
7. Locate two potential caretakers of the unclaimed files and instruct the primary caretaker on the responsibilities associated with holding, returning and possibly destroying confidential client files. (See Handbook p. 6 and Forms – Letter of Instructions to Client File Caretaker on p. 45.)
8. Transfer the electronic records from office equipment to a durable storage media. Make sure that all office equipment has been wiped clean of confidential information before it is transferred to a new owner or disposed of. (See Handbook p. 8.)
9. If there are funds in the DMD's trust account, reconcile the trust account records to determine ownership of the funds. If possible, assuming that there is no controversy or litigation, file a petition to

- disburse funds belonging to clients from the trust account. Provide notice of petition to claimants if necessary. (See Handbook p. 8 and Forms – Petition for Order to Disburse Client Funds on p. 38 and Proposed Order to Disburse Client Funds on p. 41.)
10. Keep track of services provided and hours spent by the Receiver and assistants, along with expenses incurred.
 11. Submit a final report to the Court and a Petition for Discharge. (See Handbook p. 10 and Forms – Petition for Order Discharging Receiver on p. 48, Report of Receiver on p. 52 and Proposed Order Discharging Receiver on p. 55.)
 12. Send a copy of the Order of Discharge to the Maine Board of Overseers of the Bar and the bar governance agency of other jurisdictions in which the DMD practiced.

“WHAT IF?”
QUESTIONS RECEIVERS FREQUENTLY ASK

Q. Some of the members of the local bar have agreed to handle the DMD’s pending files. Can I box up the files and send them over to these attorneys?

A. The Receiver should not release a client file to successor counsel without first obtaining the client’s written consent.

Q. The DMD had a large practice and kept all of his files for years. Surely the Court doesn’t expect me to photocopy all of these materials?

A. No. However, in cases where it is foreseeable that a claim may need to be defended concerning a file, it is desirable for the Receiver to retain copies of active files. The Receiver should consult with the Maine Board of Overseers of the Bar when questions arise.

Q. I just got a settlement check in from an insurance company for a client represented by the DMD. The check is made out jointly to the DMD and the client. What do I do with it?

A. Get an order from the court authorizing you to deposit the check if the initial order doesn’t already give you that authority. Get the client to endorse the check as well and deposit it in the DMD’s trust account. Have the court authorize disbursement of the funds, including approving payment of the DMD’s fee to the DMD’s estate or office account.

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Petition for Appointment
 (deceased)) of Receiver to Protect
of **DMD Residence**, ME) Clients' Interests
) M. Bar R. 7.3(f)

Now comes **PR Name** , in **His or Her** capacity as the named Personal Representative under the Last Will and Testament of **DMD Name**, Esq. by and through **His or Her** counsel, and moves pursuant to Maine Bar Rule 7.3(f) for the appointment of a Receiver to Protect Client's Interests and in support of this motion states as follows:

1. Attorney **DMD Name** died on **Date of Death** after **Cause of Death**, having been hospitalized for such illness on **Date of Hospitalization**. At the time of **His or Her** death, **DMD Name** was actively engaged in the practice of law as a sole practitioner at **His or Her** offices in **Office Location**, Maine.
2. No partner, executor or other responsible person capable of handling Attorney **DMD name**'s professional matters is known to exist.
3. **PR Name** is the **Relationship of PR to DMD** of Attorney **DMD Name**, and is the named Personal Representative under the Last Will and Testament of Attorney **DMD Name** dated **Date of Will** (the "Will").
4. **PR Name** by and through **His or Her** undersigned counsel, has, contemporaneously with the filing of this Petition, filed a Petition for Informal Probate of Will and Appointment of Personal Representative in the **County of**

Probate Probate Court which seeks the informal probate of the Will and the appointment of **PR Name** as Personal Representative.

5. **Receiver Name**, Esq., with offices in **Receiver Office Location**, Maine and duly admitted to the practice of law by this Honorable Court, has agreed to be the appointed Receiver for the purposes stated and pursuant to Maine Bar Rule 7.3(f). Attorney **Receiver Name** has been provided with a copy of this Motion, the Affidavit and the proposed Order.

6. **Receiver Name** will require broad authority consistent with M. Bar R. 7.3(f), including but not limited to:

- A. Secure **DMD Name**'s professional files;
- B. Make an inventory of such files;
- C. Take such further and appropriate action as may be necessary, in the Receiver's judgment, to protect the interest of **DMD Name**'s clients including but not limited to contacting such clients to inform them of the need to obtain new counsel and make referrals to new counsel in the appropriate cases;
- D. Send bills and cause payments for office expenses to be made;
- E. Examine records pertaining to the assets and liabilities of **DMD Name**'s trust account(s);
- F. Be reimbursed for reasonable expenses and fairly compensated for such services in connection therewith by the **Estate/Person** of **DMD Name** or such other sources as the Court may order; and

G. Advise the Court and Bar Counsel when the purposes of this appointment appear to have been completed. /; and

H. -IF NECESSARY-

Any other requested authority.

WHEREFORE, PR Name moves this Court for an Order finding that the death of DMD Name, Esq. on Date of Death requires the appointment of an attorney to make an inventory of the professional files of the said Attorney and to take other appropriate action in accordance with the Maine Bar Rules; and / together with such other provision as this Honorable Court may deem just and proper.

----IF NECESSARY---

PR Name further moves this Court for its order to resolve the special circumstances indicated in paragraphs Paragraph Number(s) by including in its Order of Appointment special authority for the Receiver, Receiver Name, Esq. to act on behalf of DMD Name in matters pertaining to Detail of Special Authority Requested together with such other provision as this Honorable Court may deem just and proper.

Date: Date Submitted

Respectfully submitted,

Atty.
Me. Bar No.
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Petition for Appointment
 (missing)) of Receiver to Protect
of **DMD Residence**, ME) Clients' Interests
) M. Bar R. 7.3(f)

Now comes **Petitioner Name**, in **His or Her** capacity as the closest **Relative/Associate** to **DMD Name**, Esq., by and through **His or Her** counsel, and moves pursuant to Maine Bar Rule 7.3(f) for the appointment of a Receiver to Protect Client's Interests and in support of this petition states as follows:

1. Attorney **DMD Name** was recognized as absent and without meaningful connection to **His or Her** legal practice on or around **Date of Initial Recognition of DMD Absence**. At the time immediately prior to **His or Her** disappearance, **DMD Name** was actively engaged in the practice of law as a sole practitioner at **His or Her** offices in **Office Location**, Maine.

2. No partner, associate or other responsible person capable of handling Attorney **DMD name**'s professional matters is known to exist.

3. **Petitioner Name**, is the **Relationship of Petitioner to DMD** of Attorney **DMD Name**, and is a close **Relative/Associate** of Attorney **DMD Name**. **Petitioner Name** was the first to recognize the potential detriment to the interests of **DMD Name**'s clients of in the wake of **DMD Name**'s continued absence.

4. The likely duration of **DMD Name**'s disappearance is indeterminable and the resumption of **His or Her** legal practice is presumed unlikely for the foreseeable future.

5. **Receiver Name**, Esq., with offices in **Receiver Office Location**, Maine and duly admitted to the practice of law by this Honorable Court, has agreed to be the appointed Receiver for the purposes stated and pursuant to Maine Bar Rule 7.3(f). Attorney **Receiver Name** has been provided with a copy of this Motion, the Affidavit and the proposed Order.

6. **Receiver Name**, will require broad authority consistent with M. Bar R. 7.3(f), including but not limited to:

- A. Secure **DMD Name**'s professional files;
- B. Make an inventory of such files;
- C. Take such further and appropriate action as may be necessary, in the Receiver's judgment, to protect the interest of **DMD Name**'s clients, including but not limited to contacting such clients to inform them of the need to obtain new counsel and making referrals to new counsel in the appropriate cases;
- D. Send bills and cause payments for office expenses to be made;
- E. Examine records pertaining to the assets and liabilities of **DMD Name**'s trust account(s);
- F. Be reimbursed for reasonable expenses and fairly compensated for such services in connection therewith by the **Estate/Person** of **DMD Name** or such other sources as the Court may order; and

G. Advise the Court and Bar Counsel when the purposes of this appointment appear to have been completed. /; and

H. -IF NECESSARY-

Any other requested authority.

WHEREFORE, **Petitioner Name** moves this Court for an Order finding that the disappearance of **DMD Name**, Esq. on or around **Date of Disappearance** requires the appointment of an attorney to make an inventory of the professional files of the said Attorney and to take other appropriate action in accordance with the Maine Bar Rules; and / together with such other provision as this Honorable Court may deem just and proper.

----IF NECESSARY---

Petitioner Name further moves this Court for its order to resolve the special circumstances indicated in paragraphs **Paragraph Number(s)** by including in its Order of Appointment special enumerated authority for the Receiver, **Receiver Name**, Esq., to act on behalf of **DMD Name** in matters pertaining to **Detail of Special Authority Requested** together with such other provision as this Honorable Court may deem just and proper.

Date: **Date Submitted**

Respectfully submitted,

Atty.
Me. Bar No.
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Petition for Appointment
 (Disabled)) of Receiver to Protect
 of **DMD Residence**, ME) Clients' Interests
) M. Bar R. 7.3(f)

Now comes **Relative/Associate Name**, in **His or Her** capacity as the closest **Relative/Associate** to **DMD Attorney's Name**, Esq. by and through **His or Her** counsel, and moves pursuant to Maine Bar Rule 7.3(f) for the appointment of a Receiver to Protect Client's Interests and in support of this petition states as follows:

1. Attorney **DMD Name** was diagnosed as **Type of Disability** disabled and without ability to continue a meaningful connection to **His or Her** legal practice on or around **Date on Which Disability Forced Absence from Practice**. At the time immediately prior to **His or Her** disability, **DMD Name** was actively engaged in the practice of law as a sole practitioner at **His or Her** offices in **Office Location**, Maine.

2. No partner, associate or other responsible person capable of handling Attorney **DMD name's** professional matters is known to exist.

3. **Petitioner Name** is the **Relationship of Petitioner to DMD Attorney** of Attorney **DMD Name**, and maintains a close relationship with Attorney **DMD Name**. **Petitioner Name** was the first to recognize the potential detriment to the interests of **DMD Name's** clients of in the wake of **His or Her** continued disability.

4. **DMD Name's Type of Disability** disability is presumed **Chronic/Long-term** and makes the resumption of **His or Her** legal practice unlikely for the foreseeable future.

5. **Receiver Name**, Esq., with offices in **Receiver Office Location**, Maine and duly admitted to the practice of law by this Honorable Court, has agreed to be the appointed attorney for the purposes stated and pursuant to Maine Bar Rule 7.3(f). Attorney **Receiver Name** has been provided with a copy of this Motion, the Affidavit and proposed Order.

6. **Receiver Name** will require broad authority consistent with M. Bar R. 7.3(f), including but not limited to:

- A. Secure **DMD Name's** professional files;
- B. Make an inventory of such files;
- C. Take such further and appropriate action as may be necessary, in the Receiver's judgment, to protect the interest of **DMD Name's** clients including but not limited to contacting such clients to inform them of the need to obtain new counsel and make referrals to new counsel in the appropriate cases;
- D. Send bills and cause payments for office expenses to be made;
- E. Examine records pertaining to the assets and liabilities of **DMD Name's** trust account(s);
- F. Be reimbursed for reasonable expenses and fairly compensated for such services in connection therewith by the **Estate/Person** of **DMD Name** or such other sources as the Court may order; and

G. Advise the Court and Bar Counsel when the purposes of this appointment appear to have been completed. /; and

H. -IF NECESSARY-

Any other requested authority.

WHEREFORE, **Petitioner Name** moves this Court for an Order finding that the emergent disability of **DMD Name**, Esq., on or around **Date of Disability** requires the appointment of an attorney to make an inventory of the professional files of the said Attorney and to take other appropriate action in accordance with the Maine Bar Rules; and / together with such other provision as this Honorable Court may deem just and proper.

----IF NECESSARY---

Petitioner Name further moves this Court for its order to resolve the special circumstances indicated in paragraphs **Paragraph Number(s)** by including in its Order of Appointment special enumerated authority for the Receiver, **Receiver Name**, Esq. to act on behalf of **DMD Name** in matters pertaining to **Detail of Special Authority Requested** together with such other provision as this Honorable Court may deem just and proper.

Date: **Date Submitted**

Respectfully submitted,

Atty.
Me. Bar No.
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.)
 (deceased))
 of **DMD Residence**, ME)
)
)

Affidavit of Personal Representative
M. Bar R. 7.3(f)

I, **PR Name**, upon oath, depose and say that:

1. My **Relationship (Husband, Wife, Sister, Brother or Other)**, **DMD Name** died on **Date of Death** . At the time of **His or Her** death, **DMD Name** was actively engaged in the practice of law as a sole practitioner at **His or Her** offices in **DMD Office Location**, Maine.

2. No partner, executor or other responsible person capable of handling **DMD Name’s** professional matter is known to exist.

3. I am the **Relationship** of **DMD Name**; I am also known as **PR Name**. I am the named personal representative under the Last Will and Testament of **DMD Name** dated **Date of Will or Instrument** (the “Will”).

4. I am informed that my counsel, has, contemporaneously with the filing of the Motion for which I am signing this Affidavit, filed a Petition for Informal Probate of Will and Appointment of Personal Representative in the **County of Probate** County Probate Court which seeks the informal probate of the Will and the appointment of myself as personal representative.

Date: **Date Submitted**

Respectfully submitted,

PR Name
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.)
 (missing or disabled))
 of **DMD Residence**, ME)
)
)

Affidavit of Petitioner
M. Bar R. 7.3(f)

I, **Petitioner Name**, upon oath, depose and say that:

1. My **Relationship (Husband, Wife, Sister, Brother, Associate or Other)**, **DMD Name** disappeared on approximately **Date Missing**. At the time of **His or Her** disappearance, my **Relationship** was actively engaged in the practice of law as a sole practitioner at **His or Her** offices in **DMD Office Address**, Maine.
2. Since the time of **DMD Name**'s disappearance, **His or Her** law practice has remained untended and the interests of **his or her** clients have been without meaningful representation. There is no reason to believe that **DMD Name** intends to resume **His or Her** law practice in the foreseeable future.
3. No partner, associate or other responsible person capable of handling **DMD Name**'s professional matters is known to exist.

Date: **Date Submitted**

Respectfully submitted,

Petitioner Name
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Name,**) Order on Petitioner’s
(**deceased/missing/disabled**)) Motion for Appointment of
of **DMD Residence,** Maine) Receiver to
) Protect Clients’ Interests
) M. Bar R. 7.3(f)

THIS MATTER having come before the undersigned Justice of the Maine Supreme Judicial Court, upon petition of **Petitioner Name, Relationship of Petitioner to DMD** of **DMD Name** for an order Appointing a Receiver to protect the interests of **DMD Name** and **His or Her** clients, the Court makes the following:

FINDINGS OF FACT

1. Attorney **DMD Name,** of **DMD Residence,** Maine, died unexpectedly on **Date of Death.**

-OR-

Attorney **DMD Name,** of **DMD Residence,** Maine, has been absent and without meaningful connection to **His or Her** legal practice since on or around **Date of Initial Recognition of Absence.**

-OR-

Attorney **DMD Name** is diagnosed as **Type of Disability** disabled and without ability to continue a meaningful connection to **His or Her** legal practice since on or around **Date at Which Disability Forced Absence from Practice.**

2. **-IF NECESSARY-**

The likely duration of **DMD Name**'s disappearance is indeterminable and the resumption of **His or Her** legal practice is presumed unlikely for the foreseeable future.

-OR-

DMD Attorney's Name's Type of Disability disability is presumed chronic and makes resumption of **His or Her** legal practice unlikely for the foreseeable future.

3. **DMD Name** was engaged in the practice of law as a sole practitioner with **His or Her** office in **DMD Office Location**, Maine.
4. **DMD Name** practiced with no partner, executor or other responsible person capable of conducting the **His or Her** affairs.
5. The appointment of a Receiver is necessary to protect the interest of Attorney **DMD Name**'s clients.

THEREFORE, pursuant to Maine Bar Rule 7.3(f), it is ORDERED as follows:

1. **Receiver Name** is appointed Receiver and directed to:
 - A. Secure **DMD Name**'s professional files;
 - B. Make an inventory of such files;
 - C. Take such further appropriate action as may be necessary to protect the interests of **DMD Name**'s clients including but not limited to contacting such clients to inform them of the need to obtain new counsel and make referrals to new counsel in the appropriate cases;

- D. Send bills and cause payments for office expenses to be made;
- E. Examine records pertaining to the assets and liabilities of **DMD Name's** trust account(s);
- F. Be reimbursed for reasonable expenses and fairly compensated for such services in connection therewith by the Person of **DMD Name** or such other sources as the Court may order; and

-OR-

Be reimbursed for reasonable expenses and fairly compensated for such services in connection therewith by the **Estate of DMD Name** as an administrative expense of that estate or such other sources as the Court may order; and

- G. Advise the Court and Bar Counsel when the purposes of this appointment appear to have been completed.

- H. **-IF NECESSARY-**

Any other requested authority;

Dated: _____

Justice, Maine Supreme Judicial Court

Date
Means of Service

Personal Representative Name
Personal Representative
Estate of DMD Name
Personal Representative Address

Re: Notice of Pending Claim Against Estate of DMD Name

Dear Personal Representative Name:

As you may know, I have been appointed Receiver of the law practice of DMD Name for the purpose of winding down the practice. A copy of the court order is enclosed. Please accept this letter as notice that I plan to apply to the court for compensation from the estate of DMD Name for my services as Receiver following the wind down of the practice. Pursuant to the attached order, compensation 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.

Sincerely yours,

Receiver Name
Receiver
Law Practice of DMD Name

Date
Means of Service

DMD Name
DMD Residential Address

Re: Notice of Pending Claim Against DMD Name

Dear DMD Name:

As you may know, I have been appointed Receiver of your law practice for the purpose of winding down the office in an orderly manner. A copy of the order is enclosed. Please accept this letter as notice that I plan to apply to the court for compensation from you for my services as Receiver. My motion for compensation will include all out-of-pocket expenses and a charge of \$XXX.XX 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.

Sincerely yours,

Receiver Name
Receiver
Law Practice of DMD Name

DMD ATTORNEY:
Insert DMD Attorney Information Here

CLIENT FILE INVENTORY
FILE DISPOSITION

RECEIVER ATTORNEY:
Insert Receiver Attorney Information Here

FILE NUMBER	CLIENT LAST NAME	CLIENT FIRST NAME	DATE FILE OPENED	DATE FILE CLOSED	TYPE OF MATTER	DATE CONTACTED BY MAIL	DATE RETRIEVED FILE	FILE COPIED & RETAINED?	FILE REMAINS FOR STORAGE?
###	Name	Name	x/x/xxxx	x/x/xxxx	Matter Description	x/x/xxxx	x/x/xxxx	Y or N	Y or N

Pursuant to: Docket No.
Maine Supreme Judicial Court

CONFIDENTIAL

Date Printed: 7/20/2005
Page 1 of 1

Date

Dear **DMD Name** Law Office Client:

As you may be aware, **DMD Name** passed away unexpectedly on **Date of Death**. The Maine Supreme Judicial Court has appointed me, **Receiver Name**, as the “Receiver” to assist in closing **DMD Name**’s office and distributing **His or Her** professional files. My first task was to review the law office’s open files to ascertain their status in an attempt to ensure that no client’s interest is adversely affected by the temporary absence of representation. It appears from this review that you may have a pending matter for which **DMD Name** was your representative. If you know this to be an urgent matter requiring immediate attention you must procure other counsel right away.

Please note: I have not been appointed nor am I available 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 Maine attorney you wish.

-or-

Please note: 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. You are under no obligation to have me represent you and you may select any Maine attorney you wish. Regardless, you should obtain counsel as soon as possible to handle your matter if it requires attention.

We will close **DMD Name**’s law offices by **Expected Date of Office Closure** at the latest. Please stop by the office at **DMD Office Address** or call **Contact Name** at **Contact Phone Number** to make arrangements to obtain your file(s) immediately.

- If you are planning to stop in, it would be appreciated if you would call first so that, when possible, your files and documents can be assembled and waiting for you when you arrive.
- Nobody, 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.
- If you have a matter pending in court you will be treated as representing yourself until such time as substitute counsel enters his or her appearance on your behalf. **It is essential that you obtain a new attorney immediately if you do not wish to represent yourself.**
- If you owe the office on any account an invoice will be provided to you as soon as possible.

If you do not pick up your file(s) by **Expected Date of Office Closure**, we must 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, **Receiver Name**, Esq. at **Receiver Phone Number** or **Alternate Contact Name** at **Alternate Contact Phone Number** during normal business hours. Thank you for your understanding during this difficult time.

Sincerely,

Receiver Name
Receiver for the Law Office of **DMD Name**

Date

Dear **DMD Name** Law Office Client:

As you may be aware, **DMD Name** has recently been unavailable to work at **His or Her** law practice. This absence is due to significant personal issues which have made it difficult for **DMD Name** to continue **His or Her** normal schedule. When and if **DMD Name** will resume **His or Her** practice is impossible to know at this time. To protect the interests of **DMD Name's** clients, the Maine Supreme Judicial Court has appointed me, **Receiver Name**, as the "Receiver" to assist in closing **DMD Name's** office and distributing **His or Her** professional files. My first task was to review the law office's open files and ascertain their status in an attempt to ensure that no client's interest is adversely affected by the temporary absence of representation. It appears from this review that you may have a pending matter for which **DMD Name** was your representative. If you know this to be an urgent matter requiring immediate attention you must procure other counsel right away.

Please note: I have not been appointed nor am I available 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 Maine attorney you wish.

-or-

Please note: 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. You are under no obligation to have me represent you and you may select any Maine attorney you wish. Regardless, you should obtain counsel as soon as possible to handle your matter if it requires attention.

We will close **DMD Name's** law offices by **Expected Date of Office Closure** at the latest. Please stop by the office at **DMD's Office Address** or call **Contact Name** at **Contact Phone Number** to make arrangements to obtain your file(s) immediately.

- If you are planning to stop in, it would be appreciated if you would call first so that, when possible, your files and documents can be collected and ready for you when you arrive.
- Nobody, 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.
- If you have a matter pending in court you will be treated as representing yourself until such time as substitute counsel enters his or her appearance on your behalf. **It is essential that you obtain a new attorney immediately if you do not wish to represent yourself.**

- If you owe the office on any account an invoice will be provided to you as soon as possible.

If you do not pick up your file(s) by **Expected Date of Office Closure**, we must 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, **Receiver Name**, Esq. at **Receiver Phone Number** or **Alternate Contact Name** at **Alternate Contact Phone Number** during normal business hours. Thank you for your understanding during this difficult time.

Sincerely,

Receiver Name
Receiver for the Law Office of **DMD Name**

Sample Newspaper Advertisement:

NOTICE OF OFFICE CLOSING

The Law Office of **DMD Attorney's Name** will close on
Date of Closing

All clients having either pending or closed legal matters handled by **DMD Name** are urged to pick up their files at the former Law Offices of **DMD Name**, located at **DMD Office Address** prior to **Date of Closing**. Please call **Contact Name** at **Contact Phone Number** to ensure your file(s) will be ready when you arrive. If you have any questions, please contact **Receiver Name**, the court-appointed "Receiver" who is overseeing the transfer of client files. **Receiver Name can be reached** at **Receiver Phone Number** during normal business hours.

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Petition for Order
 (deceased/missing/disabled)) to Disburse Client
 of **DMD Residence**, ME) Trust Funds
) M. Bar R. 7.3(f)

NOW COMES the Receiver of the law practice of **DMD Name**, and petitions, pursuant to Maine Bar Rule 7.3(f), for the Court to enter an order permitting the disbursement of certain funds in the trust account(s) of **DMD Name**. In support of **His or Her** motion, the Receiver shows as follows:

- 1) **DMD Name** died on or about **Date of DMD Death**, leaving no partners or associates capable of winding down his law practice.

-OR-

DMD Name left **His or Her** law practice untended and without adequate safeguards for the interests of **His or Her** clients on or about **Date of DMD Disappearance** and lasting through **Date of This Petition**.

-OR-

DMD Name was forced by disability to leave **His or Her** law practice on or about **Date of DMD Disability** and lasting through **Date of This Petition**.

- 2) On or about **Date of Order of Appointment**, Hon. **Judge Name** appointed **Receiver Name** as Receiver of the law practice of **DMD Name**.

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

acknowledged by **Personal Representative –OR- DMD Name –OR- DMD’s Closest Known Surviving Relative Name.**

- 10) The Receiver will serve claimants against **DMD Name’s** trust account, 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.

WHEREFORE, the Receiver hereby moves the Court to enter an order permitting the Receiver to disburse funds from the client trust account(s) of **DMD Name** at **Bank Name(s)** pursuant to the plan appended hereto and titled, “Receiver Plan for the Disbursement of Client Trust Funds” and such further relief as this honorable Court deems just and proper.

Date: **Date Submitted**

Respectfully submitted,

Atty.
Receiver for the Law Practice of
DMD Name
Me. Bar No.
[Address, Telephone No., etc.]

2. On or about **Date of Order of Appointment**, **Receiver Name** was appointed by this Court as Receiver of the law practice of **DMD Name**.
3. Following the appointment, the Receiver of **DMD Name**'s practice, took possession of records relating to the attorney trust account(s) maintained by **DMD Name** at **Bank Name**, account number(s) **XX** for the purpose of determining the ownership of the funds in the account.
4. The Receiver, [**-IF APPLICABLE-** with the assistance of a bookkeeper,] has reviewed the trust account for the period **Dates Spanning Review**.
5. As of **Date of Petition**, the balance(s) in **DMD Name**'s attorney trust account(s) at **Bank Name(s)** was \$ **XXX.XX**.
6. The total value of trust account funds belonging to clients of **DMD Name** is \$ **XXX.XX**.
7. The **Personal Representative –OR- DMD Name –OR- DMD's Closest Known Surviving Relative Name** had no knowledge of any other claims against **DMD Name**'s trust accounts.

-OR-

The **Personal Representative –OR- DMD Name –OR- DMD's Closest Known Surviving Relative Name** knew of other claims against **DMD Name**'s trust accounts and these have been incorporated into the

Receiver Plan for Disbursements of Client Trust Funds appended hereto.

8. ~~IF NECESSARY~~

Despite ~~His or Her~~ best efforts, the Receiver has been unable to determine the owners of the remaining \$ ~~XXX.XX~~ in the trust account of ~~DMD Name~~.

~~OR~~

The ascertainable liabilities of the trust account(s) maintained by ~~DMD Name~~ exceed the available assets leaving a net deficit of \$ ~~XXX.XX~~.

9. The Receiver has received no notice of any claim from any former client of ~~DMD Name~~ or any other individual or entity that is not reflected in the Receiver Plan for Disbursements of Client Trust Funds.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this matter pursuant to M. Bar R. 7.3(f)
2. The funds in ~~DMD Name~~'s client trust account(s) must be disbursed equitably to ~~DMD Name~~'s former clients.
3. The Receiver Plan for Disbursement of Client Trust Funds appended hereto is an equitable plan.

THEREFORE, pursuant to Maine Bar Rule 7.3(f), it is ORDERED as follows:

The Receiver of the law practice of **DMD Name** is hereby authorized to disburse funds from the trust account(s) of **DMD Name** at **Bank Name(s)** pursuant to the plan appended hereto entitled, Receiver Plan for the Disbursement Client Trust Funds of **DMD Attorney**.

Dated: _____

Justice, Maine Supreme Judicial Court

Date

Dear **File Caretaker Name**:

On behalf of the Maine legal community and myself I want to thank you for agreeing to tend the remaining client files of **DMD Name**, Esq. You are performing an important service for both **DMD Name** and **His or Her** clients.

In this letter I hope to share with you a little bit about the profound importance of the files you will be holding and explain to you how you can best manage to keep, distribute and ultimately dispose of the files in the future.

What are these files? These are some of the files created by **DMD Name** during the time **He or She** was practicing law. Each time a new matter involving a new or existing client emerged, **DMD Name** created a file to hold all the documents relating to the matter. This is a standard practice for attorneys. We like to keep everything. In time, most matters conclude and the file becomes what attorneys refer to as “closed”. While a matter may appear to be resolved, unexpected events will occasionally cause a party to the matter to re-open the matter. In instances where a matter is re-opened, it is critical for an attorney to have all the documents relating to the original matter at his or her fingertips. Because one never knows which files might re-open and which ones will remain truly closed, an attorney will usually keep a file for a long time after everything appears resolved.

DMD Name, did exactly that. Over the course of the last few weeks I had the opportunity to examine a total of ## files kept by **DMD Name** at **His or Her** law office. As I examined the files I was able to determine which files were open and which were closed. Once each file’s status was determined, I endeavored to contact the client associated with each file and ask them to come and retrieve their file. This was an important process because, with some exceptions, a client is entitled to possess the contents of his or her files. Unfortunately, not everyone came to retrieve his or her file. Its possible that some former clients moved and didn’t receive my letter and maybe the clients with older files didn’t see the advertisement and maybe some clients determined that they just didn’t want to bother picking the file up. Whatever the reason, a large number of files remain unclaimed.

What should happen to these files? In cases like this one, the legal community looks to the family and close associates of the attorney whose law practice is closing and asks them to assist us in holding these files until the final disposition of the files can be determined. Because you are the **Relationship of Caretaker to DMD** of **DMD Name** I asked you and you generously accepted. While the responsibility for protecting these files is heavy, the actual burden to you should be light.

Your first responsibility will be to provide the appropriate file to any client with a legitimate claim to its possession. Over the course of the next few years it is likely that some former clients of **DMD Name** will seek out their file and come to you to retrieve it. It is critical that these clients have every

conceivable opportunity to retrieve their files and it is your generous service that will provide them that opportunity. There are many ways that these former clients may learn of your possession of **DMD Name**'s unclaimed files including the final order of the Court, the Board of Overseers of the Bar, old newspaper advertisements or even from other attorneys in the community. However they find you, rest assured, they will come.

Once a former client has contacted you and asked to retrieve their file, you should schedule a time for them to come and retrieve it. Make sure to give yourself enough time to locate the file and prepare the appropriate paperwork. In the binder of materials I will provide to you, I will include a number of blank Client File Release Forms and it is this form that each claimant must complete and sign before you provide them their file. Once completed, the Client File Release Form should be filed with the other completed release forms contained in the front of the binder.

You need not worry about what to return to a client and what to keep. In arranging the files, to the extent practical, I have made the necessary determinations and arranged the files accordingly. As far as you should be concerned, everything in the client file belongs to the client and should be returned in its entirety. I have arranged the files **[Insert description of file storage arrangement (i.e. alphabetical, by year, etc...)]**

Unfortunately, not everyone will appear to claim their file and archiving these unclaimed files is a vital responsibility of the caretaker. It would be nice if we could just shred and dispose of the unclaimed files but we can't. Some of these files contain documents that attorneys refer to as having "intrinsic value". These sorts of documents might be Wills or real property title paperwork, the kinds of documents that cannot be replaced and are critical to the clients who entrusted them to **DMD Name**. To destroy these documents could have profound implications for the families of a deceased loved one or clients trying to transfer property. Regardless of whatever rules might apply to the eventual destruction of less critical client files, files containing intrinsically valuable documents should be kept safe until they are needed.

Even client files without intrinsically valuable documents are still important. Because matters can be re-opened, it is important a file be available to a client if he or she should need it in the future.

What should be done with these files? It is portions of the Maine Code of Professional Responsibility that guide the legal community in circumstances like this one. In Maine, the Code is interpreted by various legal entities, among them the Professional Ethics Commission. This Commission is appointed by the Maine Supreme Judicial Court to interpret the Code of Professional Responsibility and to issue advisory opinions concerning the Code. Some of the Opinions published by the Commission bear directly on the issue of **DMD Name**'s unclaimed client files and I have included them here as Ethics Opinions # 74 and # 143.

One of the tensions these Opinions address is the difficulty of balancing the unknowable need for a file by a client and the futility of trying to keep everything forever. An Amendment to the Code adopted after these Opinions

permits *some* files to be destroyed eight years or more after the matter they pertain to appears to be resolved. Which files can be destroyed is *highly* technical issue and should only be decided by an attorney who has had the opportunity to examine the file. In this case I have already determined which files are subject to destruction and I have segregated them [Insert description of segregation of intrinsically valuable documents and destructible documents.]

You will need to hold these documents for a minimum of eight years before even considering the confidential destruction of files I have indicated are eligible. While some of the client files may exceed the eight-year minimum well in advance of the time I have indicated, it is imperative that you wait the full eight years before considering destruction. Waiting eight years for all the eligible files will simplify the procedure for you and provide clients the greatest possible period of time in which to claim their files. When it is appropriate to have the destructible files confidentially destroyed you should contact [Insert contact information for confidential destruction company.]

You will recall that we discussed an alternate caretaker. Given the confidential nature of these documents it essential that we plan now for unforeseen circumstances. As you will recall we concluded that [Insert name and details of secondary file caretaker]. In the coming weeks and months you should prepare for the possible transfer of the files to the secondary caretaker by telling those close to you who the secondary caretaker is, how he or she can be reached and how to preserve the integrity of the files until they are claimed by the secondary caretaker. If you have a Will or other estate planning documents you should include amongst them this letter or one written by you, so that your family and caretakers will know to act and who to contact.

I realize that having to preserve these files may seem like an overwhelming task. It is not a thankless one. Your service is of great importance to DMD Name and the Maine legal community. Thank you. I hope this letter is helpful to you now and in the future. If you have any questions, please free to contact me at any time.

Sincerely yours,

Receiver Name

Receiver

Law Practice of DMD Name

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Petition for Discharge
 (deceased/missing/disabled)) of Receiver Appointed
 of **DMD Residence**, ME) to Protect Clients' Interests
) M. Bar R. 7.3(f)

NOW COMES, **Receiver Name**, Receiver of the law practice of **DMD Name** ("Receiver"), and petitions the Court for an order discharging **Him or Her** as Receiver of the law practice of **DMD Name**. In support of the petition, the Receiver respectfully shows:

1. On **Date of Appointment**, upon motion of the petitioner, **Petitioner Name**, the Court appointed **Receiver Name**, Esq., as Receiver of the law practice of **DMD Name** for the purpose of securing client files belonging to **DMD Name's** law practice, securing funds held in **DMD Name's** operating and trust accounts, obtaining **DMD Name's** trust account records and protecting the interests of the clients and/or former clients of **DMD Name**.

2. The undersigned Receiver has exercised due diligence and taken all reasonable steps to fulfill **His or Her** obligations as Receiver of the law practice of **DMD Name**. **He or She** has returned or attempted to return all client files to their rightful owners. **He or She** has secured funds held in **DMD Name's** operating and trust accounts and has obtained court approval of a plan for the disbursement of client trust funds by order dated **Date of Order to Disburse Client Funds**.

3. The undersigned Receiver has reviewed **DMD Name**'s clients' files. An inventory of the client files is attached hereto as Exhibit **A**.

4. The undersigned Receiver has distributed files to a significant number of clients and/or former clients of **DMD Name**. Wherever possible Receiver has returned client files to the respective clients. A list of the files that have been returned to **DMD Name**'s clients is attached hereto as Exhibit **B**.

5. A number of **DMD Name**'s clients have not picked up their files despite receiving notice from the Receiver to do so. The Receiver now has in **His or Her** possession **X Quantity** of apparently closed files. Also in the possession of the Receiver are **X Quantity** of apparently active client files wherein the Receiver has written the respective clients and has received no instructions regarding the storage or return of the files. A list of the unclaimed files, open and closed, is attached hereto as Exhibit **C**.

6. Some disposition needs to be made of the remaining active and closed files of **DMD Name**'s former clients. The Receiver has determined that **Primary File Caretaker Name**, the **Relationship of File Caretaker to DMD of DMD Name**, is the most appropriate caretaker of these remaining files. **File Caretaker Name** is willing and able to execute these duties. **He or She** has been instructed by the Receiver in the proper method of distributing, archiving and, where and when possible, confidentially destroying these files. At such time that **Primary File Caretaker Name** is no longer able to act as caretaker **Secondary File Caretaker Name** has agreed to take possession of the remaining client files and archive them as needed. The exact plan and instructions to the

caretaker(s) have been included in the Letter of Instructions to Client File Caretaker attached hereto as Exhibit D.

-IF NECESSARY-

7. The undersigned Receiver has disbursed all funds from any trust accounts held by **DMD Name** to the appropriate persons as per the Court's Order dated **Date of Order to Disburse Client Funds**. A copy of this order is attached hereto as Exhibit **E** and an accounting of said disbursements is attached hereto as Exhibit **F**.

8. The undersigned Receiver has submitted a summary of **His or Her** time and expenses incurred in serving as Receiver of the law practice of **DMD Name**. The summary of **His or Her** time and expenses is attached hereto as Exhibit **G**. In carrying out his duties as Receiver, the undersigned Receiver has provided services and incurred expenses in the total amount of \$ **XXX.XX**.

WHEREFORE, the undersigned Receiver respectfully requests the court to enter an order as follows:

1. Discharging **Him or Her** as Receiver of the law practice of **DMD Name**;
2. Approving the plan governing the disposition of the unclaimed client files and authorizing **File Caretaker Name** to retain and tend the unclaimed files of clients of **DMD Name** as directed by the Receiver;

3. Finding that **He or She** is entitled to reasonable compensation for **His or Her** services as Receiver of the law practice of **DMD Name** and reimbursement of expenses incurred while serving as Receiver of the law practice of **DMD Name** in the amount of \$ **XXX.XX**, and
4. Such other relief that this Court deems just and proper.

Date: **Date Submitted**

Respectfully submitted,

Atty.
Receiver for the Law Practice of
DMD Name
Me. Bar No.
[**Address, Telephone No., etc.**]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: **DMD Attorney**, Esq.) Report of Receiver
 (deceased/missing/disabled)) M. Bar R. 7.3(f)
 of **DMD Residence**, ME)

I, **Receiver Name**, was appointed as Receiver of **DMD Name**'s law practice by Order of this Court dated **Date of Order of Appointment** pursuant to M. Bar R. 7.3(f). In that capacity, I can report that I have performed and completed the following tasks:

1. All of Attorney **DMD Name**'s professional files have been secured and inventoried in the office located at **DMD Office Address**. Files were identified and inventoried, where possible, in categories identified as follows:

Open matters (**##** files)
Closed matters (**##** files)

Eligible for Destruction (**##** files)
Permanent Documents (**##** files)

2. With the assistance of **DMD Name**'s office staff, those clients with files deemed to contain "pending matters" were contacted by mail, and in many cases also by phone, to discuss retrieval of their files and the necessity for successor counsel to represent their interests. See the attached sample letter to clients, Exhibit **H**.

[Were a significant number of letters returned?] I accepted **Number of**

Client's Accepted from DMD Practice of DMD Name's clients as my clients.

3. A (T) tombstone advertisement (s) entitled "Notice of Office Closing" Was/Were placed in Name of Newspaper(s) on Dates of Advertisement(s). See the attached ad copy, Exhibit I.
4. All but # client(s) having open matters have had their files either picked up by them, an authorized individual or successor counsel, or had the file either mailed or delivered to them or their successor counsel.
5. # former clients have obtained their client files, closed and open, and each has signed a receipt to that effect. Nevertheless, many closed and ## open files have not been retrieved. I propose that those files be turned over to Primary File Caretaker Name, the Relationship of File Caretaker to DMD of DMD Name. File Caretaker Name has agreed to act as the caretaker of the remaining client files. File Caretaker Name has been instructed as to the responsibilities involved (see attached Exhibit I). Along with the Letter of Instruction I have also prepared for Him or Her a binder which contains the inventory of each category of inventoried files, identifies which of those files have been retrieved to date, and contains the actual file receipts. All unretrieved files are presently stored at Present Location of File Storage. I am advised that, if appointed, File Caretaker Name intends to Keep/Move these files

At/To Future Location of File Storage in the future. As such time as the primary file caretaker is no longer able to perform **His or Her** duties, **Secondary File Caretaker Name** has agreed to assume the responsibility for the files.

6. As part of arranging the final disposition of the office equipment, I digitally recorded all identifiable electronic files and attempted to delete these files from the equipment. I propose that the digital record of these files be provided to **File Caretaker Name** for inclusion with the balance of client files.
7. **WHATEVER ELSE MAY BE RELEVANT...**

By copy of this Report, I am also advising Bar Counsel to the Board of Overseers of the Bar of the completion of my work as the Receiver. In addition, I am providing Bar Counsel with a copy of the complete file inventory for their use in the event a former **DMD Name** client contacts them.

Date: **Date Submitted**

Respectfully submitted,

Atty.
Receiver for the Law Practice of
DMD Name
Me. Bar No.
[Address, Telephone No., etc.]

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO.

In RE: DMD Attorney, Esq.) Order to Discharge
 (deceased/missing/disabled)) Receiver Appointed to
 of DMD Residence, ME) Protect Clients' Interests
) M. Bar R. 7.3(f)

THIS MATTER having been heard by the undersigned Justice of the Court, upon the motion of the Receiver herein for an order discharging Him or Her as Receiver of the law practice of DMD Name, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. On Date of Appointment, upon motion of Petitioner Name, the Court appointed Receiver Name, Esq., as Receiver of the law practice of DMD Name for the purpose of obtaining possession of files belonging to DMD Name's clients, securing funds held in DMD Name's operating and trust accounts, obtaining DMD Name's trust account records, and protecting the interests of the clients and/or former clients of DMD Name.
2. Receiver Name, Receiver of the law practice of DMD Name, acting in good faith, has taken all reasonable steps to fulfill His or Her obligations as Receiver of the law practice of DMD Name. He or She has returned or attempted to return all client files to their rightful owners. He or She has secured funds

held in **DMD Name**'s operating and trust accounts and has identified or attempted to identify the persons to whom those funds belong.

3. **Receiver Name** has reviewed **DMD Name**'s clients' files. An inventory of the client files is attached hereto as Exhibit **A**.

4. **Receiver Name** has distributed files to a significant number of clients and/or former clients of **DMD Name**. **Receiver Name** has returned, where possible, all active client files to the respective clients. A list of the files that have been returned to **DMD Name**'s clients is attached hereto as Exhibit **B**.

5. A number of **DMD Name**'s clients, have not picked up their files, despite **Receiver**'s good faith effort to provide them notice that they should do so.

Receiver Name now has in **His or Her** possession approximately ## open client files wherein **He or She** has written the respective clients and has received no instructions regarding the storage or return of the files. A list of the files that have not been claimed by the clients is attached hereto as Exhibit **C**.

6. Some disposition needs to be made of the remaining files of **DMD Name**'s former clients. **Primary File Caretaker Name**, the **Relationship of File Caretaker to DMD** of **DMD Name**, is the most appropriate caretaker of these remaining files. **Primary File Caretaker Name** is willing and able to execute these duties. **He or She** has been instructed by the Receiver in the proper method of tending and distributing these files. **Secondary File Caretaker Name** has agreed to assume these duties at such time that **Primary File Caretaker Name** is no longer able to perform them.

7. The Receiver has disbursed all funds from any trust accounts held by **DMD Name** to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit **E** and an accounting of said disbursements is attached hereto as Exhibit **F**.

8. **Receiver Name** has submitted a summary of **His or Her** time and expenses incurred in serving as Receiver of the law practice of **DMD Name**. The summary of **His or Her** time and expenses is attached hereto as Exhibit **F**. In carrying out **His or Her** duties as Receiver, **Receiver Name** has provided services and incurred expenses with a reasonable value of \$ **XXX.XX**.

Based upon the foregoing FINDINGS OF FACT, the Court makes the following conclusions of law:

1. **Receiver Name**, Receiver of the law practice of **DMD Name**, has taken all reasonable steps to discharge **His or Her** obligations as Receiver of the law practice of **DMD Name**, to return all client files, and to disburse all funds in **DMD Name**'s operating and trust accounts.

2. **Receiver Name** is entitled to reasonable compensation for **His or Her** services rendered and reimbursement of expenses incurred while serving as Receiver of **DMD Name**'s law practice in the amount of \$ **XXX.XX**.

3. Pursuant to the directions provided (See Exhibit **I**) to **Primary File Caretaker Name**, **He or She** should be authorized to maintain in storage at **Address of Future Location of File Storage** those client files that have not yet

been retrieved by the clients of **DMD Name**. At such time that **Primary File Caretaker Name** is not longer able to perform **His or Her** duties, **Secondary File Caretaker Name** should be authorized to assume the responsibilities of the file caretaker and store such files that remain at a location convenient to the **Secondary File Caretaker Name**.

THEREFORE it is hereby ORDERED as follows:

1. **Receiver Name** is discharged as Receiver of the law practice of **DMD Name**.
2. **Primary File Caretaker Name** is hereby authorized to maintain in storage at **Address of Future Location of File Storage** those client files that have not been retrieved by the clients of **DMD Name**. The tending of these files will be accomplished as outlined in the letter of instructions attached hereto as Exhibit I. At such time that **Primary File Caretaker Name** is no longer able to perform **His or Her** duties as caretaker, **Secondary File Caretaker Name** is authorized to assume caretaker duties at a location convenient to **Him or Her**.
3. ~~EITHER~~

DMD Name is hereby ordered to pay \$ **XXX.XX** to **Receiver Name** as reasonable compensation for **His or Her** services as Receiver for the law practice of **DMD Name** and reimbursement for expenses incurred by **Receiver Name** while serving as Receiver of **DMD Name**'s law practice. This order is deemed a judgment against **DMD Name** for money owed, subject to enforcement under the applicable laws of Maine.

-OR-

Receiver Name is entitled to reasonable compensation for his services as Receiver for the law practice of **DMD Name** and reimbursement for expenses incurred by **Him or Her** while serving as Receiver in the amount of \$ **XXX.XX**. Upon presentation of this Order, said compensation and expenses are to be paid by the Estate of **DMD Name** as an administrative expense of the Estate.

Dated: _____

Justice, Maine Supreme Judicial Court

Opinion #51

Issued 12/5/1984

**THE GRIEVANCE COMMISSION OF THE BOARD OF OVERSEERS OF THE
BAR**

Question

May a lawyer refuse to provide a former client a deposition and other data in the client's file unless and until the former client reimburses the lawyer for the costs of those items which were paid by the lawyer?

Opinion

This inquiry arises out of a situation in which a lawyer was representing a client in a still pending civil action; the client failed to pay any sum on account of fees or disbursements; and the lawyer has obtained permission from the Superior Court to withdraw from further representation. The client has now obtained another lawyer who has requested the entire file from his client's former lawyer, and that file has been provided, except for a deposition and certain data, the costs of which were advanced by the lawyer first representing the client. Under these circumstances, the lawyer who first represented the client inquires as to the ethical propriety of his insistence on reimbursement from his former client for costs prior to turning over materials obtained as a result of his advancing such costs.

It is the opinion of the Grievance Commission that under these circumstances the lawyer is required to furnish to the lawyer's former client the contents of the former client's file, including the deposition and other data, the costs of which were advanced by lawyer, and that it would be improper under M. Bar. R. 3.7(c)(1) for the lawyer to condition the furnishing of such material on reimbursement for such costs.

Several provisions of the Maine Bar Rules bear on this inquiry:

1. M. Bar R. 3.5(a)(2) provides *inter alia*, that "[a] lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including . . . delivering to the client all papers and property to which the client is entitled. . . ."

2. M. Bar R. 3.5(a)(3) provides that “[w]ithdrawal shall not be conditioned upon payment by the client for services to date; and a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.”
3. M. Bar. R. 3.6(f)(2)(iv) provides, *inter alia*, that a lawyer shall “promptly deliver to the client, as requested by the client . . . properties in the possession of the lawyer which the client is entitled to receive.”
4. M. Bar. R. 3.7(c)(1) provides, *inter alia*, that while a lawyer may “[a]ssert a lien granted by law against the proceeds of such action or litigation to secure his fee or expenses,” this “does not authorize an attorney to assert a lien on a client’s file in order to secure payment of his fee. The assertion of such a lien (if any exists) is improper.”
5. M. Bar R. 3.7(d) provides, *inter alia*, that “a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and expenses of obtaining and presenting evidence.”

While these provisions of the Maine Bar Rules do not explicitly address the question of payment for a lawyer’s disbursement, as distinguished from payment for a lawyer’s services, the Commission construes M. Bar. R. 3.7 (c)(1), which prohibits a lawyer from asserting a lien on a client’s file in order to secure payment of his fee, as encompassing a prohibition against the assertion of a lien on a client’s file in order to secure the payment of a lawyer’s disbursements. Any other construction of that Rule would be prejudicial to the former client and would thus be inconsistent with M. Bar. R. 3.5(a)(2) which expressly requires that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client. Given the Commission’s construction of Rule 3.7(c)(1), the Commission concludes that under the circumstances presented here, it would be improper under that Rule for the lawyer to condition the furnishing of the deposition and other data to his former client on reimbursement for his costs for that material. The Commission also notes that this result is consistent with an earlier opinion of the Maine Bar Association Professional Ethics Committee, Opinion No. 39, issued February 2, 1976.

The result reached here does not mean that the lawyer has no recourse. If a client has agreed to be liable for the lawyer's reasonable expenses and disbursements, a lawyer who withdraws from representation, with leave of Court, may have a civil remedy against his former client to recover such expenses and disbursements.

Opinion #74

Issued 10/1/1986

**THE PROFESSIONAL ETHICS COMMISSION OF THE BOARD OF OVERSEERS
OF THE BAR**

Law Firm X does not wish to retain custody of its closed client files on matters for which it is no longer providing services. Can it return these files to the client absent such a request from the client? If the client refuses to take custody of the files, may the firm dispose of them? May the firm in the latter case assess the client for the cost of the storage of the files if it elects to retain the files to protect the client or the firm from future litigation?

Opinion

Before addressing each question raised, there are two rules in the Code of Professional Responsibility that provide general principles that have some application to the questions raised. Rule 3.5(a)(2) states:

A lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

Rule 3.6(f)(2) states:

A lawyer shall:

- (i) Promptly notify a client of the receipt of his funds, securities, or other properties;
- (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;
- (iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to his client regarding them; and
- (iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

From the above Rules several general conclusions can be made that have some application to the questions raised. First, a lawyer's duty to safeguard a client's property in his possession does not cease merely because his representation ends. Secondly, a client file containing any information of value to the client should not be destroyed without the client having been given timely advance notice and full and ample opportunity to take custody of it. Thirdly, no general rule can be made as to when it is safe to destroy a client file.^[1] For example, a file should not be destroyed if the lawyer knows or has reason to know that the information may be necessary or useful to the client in a matter in which the applicable statute of limitations has not run. Finally, it must be recognized, on the other hand, that increasing the lawyer's overhead expense by requiring him to indefinitely store all client files even if they contain no useful information serves no useful purpose for the client or the public.

With these general principles in mind, the Commission answers the specific questions raised by the inquiry as follows: The firm may return the file to the client absent a request from the client as long as in so doing it is satisfied that the client in fact will receive it under circumstances in which he is able to take reasonable measures to secure it and dispose of it responsibly. For instance, the attorney cannot simply deliver possession of a file to a client who is incapable of understanding or appreciating the importance of making an appropriate decision as to its disposal. There must also be no reasonable expectation on the part of the client that the firm would retain custody of the file for a period longer than the time it seeks to dispose of it.

If the firm cannot release custody of the file due to the existence of one of the above conditions, the firm can destroy it only if it determines there is no reasonable likelihood that the file contains valuable and useful information, not otherwise readily available to the client, that the firm knows or has reason to know would be useful to that client in a future matter. The firm should be particularly careful not to destroy original documents if there is any reasonable possibility that they may be needed in the future.

If the firm determines it can neither surrender custody of nor destroy the file for any of the reasons cited above, and if there has been no prior agreement with the client with respect to a charge for the cost of storage and the client had a reasonable expectation that the firm would retain custody of the file as part of its legal services, the firm may not assess a fee for storage without the client's consent even if it determines it is doing so to protect the client

from future litigation. Under no circumstances may it assess a fee without the client's prior consent when the purpose of the storage is solely to protect the firm from future litigation.

[1] The lawyer's own interests may be served by retaining a client file beyond the six year limitation period when there is any reason to suspect that a client grievance may be brought concerning the subject matter which the file contains. The Supreme Court has impliedly held that no statute of limitations applies to client grievances. See Supreme Court order of April 11, 1979, 396 A.2d at p. LV.

Opinion #120

Issued 12/11/1991

**THE PROFESSIONAL ETHICS COMMISSION OF THE
BOARD OF OVERSEERS OF THE BAR**

Question

An attorney has inquired as to whether an attorney who is terminating his relationship with a client is obliged to assume the expense of turning the file over to the client. The question is essentially whether it is sufficient for the attorney to make the file available for the client to pick up at his office or whether he is required to mail the file at his own expense or otherwise deliver it into the client's hands.^[1]

Opinion

Resolution of the question presented is controlled by Bar Rule 3.5(a)(2). That rule states that:

(2) A lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled. . . .

The inquiry presented concerns the interpretation to be given to the word "delivering" in reference to the papers and property of the client. Although this term could be read as requiring the attorney to assume responsibility for conveying the file into the client's hands, the Commission is of the opinion that the attorney's ethical obligation will ordinarily be satisfied simply by making it available for the client to pick up at the attorney's office. We think the primary purpose of the rule was to insure that the attorney in question would not delay the processing of the client's case by withholding the file rather than to impose upon him the cost of transporting it to a particular location. Since the transfer of the file would ordinarily be for the benefit of the client, it seems reasonable to require the client to assume the cost of mailing or other form of delivery if he is unwilling to pick it up at the attorney's office.

^[1]A subsidiary question as to whether an attorney can condition delivery of the file upon payment of costs of copying has been answered in a previous opinion. See Opinion #51 (1984). Since the file belongs to the client, the cost of any copying should be borne by the attorney since any such copies would be solely for his or her own benefit.

Opinion #143

Issued 7/26/1994

**THE PROFESSIONAL ETHICS COMMISSION OF THE
BOARD OF OVERSEERS OF THE BAR**

Question

The Commission has been asked for guidance by attorneys faced with the following problem. Within the State there still remains a significant number of solo practitioners. As the years pass, these attorneys discover they are custodians of an overwhelming number of client files. As long as the lawyers are working, the secure storage of this material is the only major concern. However a serious problem arises when a lawyer's practice is unexpectedly terminated through death or disability. What arrangements should solo practitioners make in advance to insure all/ any obligations to their then former clients?

Opinion

It must be recognized that the Commission cannot establish an exhaustive set of specific procedures that all solo practitioners must follow to meet their obligations in this difficult situation. However, it can identify the concerns that must be addressed by these circumstances, and at least proffer some specific suggestions that would meet these concerns. See also ABA Formal Opinion 92-369 for further discussion and suggestions.

I. The Bar Rules

First of all, the Bar Rules, while not directly addressing the problem, do articulate some requirements that relate to the question. Rule 3.6(e)(2) states:

A lawyer shall:

- (i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;

- (iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them; and
- (iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Rule 3.5(a)(2) states:

A lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

Rule 3.6(a) states:

A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments.

Finally, Rule 3.6(h)(1) states that a lawyer shall not . . . knowingly reveal a confidence or secret of the client.

II. The Need for a Plan

From these Rules two obvious principles emerge. First, the files must be kept secure at all times. They cannot be abandoned or simply casually passed on to some accommodating custodian. See Opinion 74. Arrangements must be made not only to prevent destruction but to preserve the confidential information that is contained within the files. Furthermore, many documents (e.g. wills, contracts, and notes) may not only be confidential but irreplaceable.

Secondly, arrangements must be made to inform the client of the termination and protect the client from deadlines in pending proceedings that require replacement representation in a timely manner.

To carry out the above obligations it is obvious that the solo practitioner should adopt a plan *in advance* of his departure. It is obviously too late to wait until death or disability to let unprepared successors deal with an impossible situation. Spontaneous improvisation when the crisis occurs is unacceptable.

III. Suggestions as to Plan Provisions

The specific content of the plan is a matter for each practitioner to determine based on his or her practice. Due to the complexity of the problem and the variety of circumstances surrounding any given solo practice, it is impossible for the Commission to promulgate what *must* be in every plan. However, the Commission makes the following suggestions it hopes will assist the lawyer in designing a plan that will meet the clients' legitimate needs and expectations.

First, a plan should include as one of its elements the engagement of an attorney to supervise the winding down of the practice.

Second, the plan ought to provide that clients be promptly notified of any termination. They should be advised of the name of the supervising attorney and key staff who might be employed to assist in the transition. They should be invited to retrieve the files and seek replacement counsel if further legal services are required to complete a task.

The above provisions are not unlike those that take place when a lawyer is disbarred or suspended. See Rules 7.3(i)(1)(B) and 7.3(i)(1)(c). The procedures in such instances also include prompt notification of opposing parties and courts in which the lawyer has any matters which might in any way be deemed ongoing.

Third, for those files that are not seasonably retrieved by clients, a determination should be made by a lawyer, presumably the supervising attorney described in the first suggestion, as to what to do next. Can the file be delivered even if the client makes no effort to retrieve it? Is destruction possible and permissible? See Opinion 74 for further discussion of this issue.

Fourth, what is to be done with those remaining files where destruction appears unreasonable at the time of transition and no client takes custody of the material? In those cases a suitable custodian ought to be engaged by the lawyer or the lawyer's estate, who is willing to assume custody of the files.

Finally, the Commission suggests that the supervising attorney notify the Board of Overseers of the Bar of the location of the unclaimed files. This gives former clients who were unable to be contacted during the transition period a chance to locate the file at some later date.

While the suggestions in the previous paragraphs may satisfactorily discharge the departing lawyer's duties, it will be argued that they are based on an unrealistic expectation that any lawyer can be found who would be willing to undertake the supervisory obligations described. While many lawyers extend the courtesy of "covering" for one another during a vacation or temporary disability,^[1] it is unlikely in the extreme that any lawyer would have the time or desire to assume virtually a second practice—especially when there is no real possibility he will be compensated for it by clients. Furthermore, the lawyer contemplating his professional demise may be apprehensive about involving another attorney in such a position due to problems such as preserving confidences with respect to specific clients. However, the Commission believes that the Bar Rules require that the solo practitioner make suitable arrangements in advance to both oversee the notification process and take custody of the files.

^[1][Malpractice insurance carriers for some time have required solo attorneys to have some other attorney be available to "back up" in cases of disability or vacations.]

Opinion #187
Issued 11/5/2004

**THE PROFESSIONAL ETHICS COMMISSION OF THE
BOARD OF OVERSEERS OF THE BAR**

Question

An attorney has asked the Commission for guidance on the scope of the attorney's obligation to provide a client with the contents of the client's file. Specifically, the attorney has asked whether the client is entitled to receive everything that the attorney has maintained with respect to the client's matter or whether the attorney is entitled to retain the attorney's notes, internal research memoranda and administrative documents, and similar documents created during the course of representation.

Opinion

This question places squarely in front of us issues we left open in a footnote to a recent opinion, Number 183. *See* Opinion #183, n.1 (issued 1/28/04). In that Opinion, we were asked whether an attorney is "obligated to keep a paper copy of the attorney's correspondence, if the attorney retains a copy of the correspondence in a computer or by other means of electronic storage." *Id.* We answered that question in a qualified fashion. We determined that an attorney may "dispense[] with the retention of paper files in favor of computerized records," provided that the attorney is able to do so in a manner that comports with the attorney's obligation adequately to communicate with the client and to safeguard the client's property. *Id.* at 2. The attorney who sought our opinion on file retention understood that the attorney's correspondence was part of the client's file. We noted in Opinion #183, however, that we had not been asked to determine whether Maine's Code of Professional Responsibility "requires that certain categories of documents be maintained as part of the file or whether all records maintained by the attorney as part of the file . . . are property of the client." *Id.* 1 n.1.

File Maintenance

To guide attorneys on the scope of their obligation to provide a client with the contents of the client's file, we must at the outset discuss appropriate file maintenance, because an attorney can only discharge the ethical obligation to return materials to the

client if the attorney has first discharged the ethical obligation to maintain the client's file.

Although the Maine Code of Professional Responsibility does not specifically deal with the obligation of an attorney to maintain files and, accordingly, offers no guidance as to the required contents of an attorney's file, it is inherently clear that adequate file maintenance is necessary in order for an attorney to discharge the obligation to "employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services." M. Bar R. 3.6(a). Files that are maintained in a comprehensive and orderly manner assist the attorney's own preparation and enable the attorney to review relevant notes, pleadings, correspondence, and documents before important telephone calls, interviews, meetings, and court appearances. See M. Bar R. 3.6(a)(2) (requiring attorneys to handle legal matters with "preparation adequate in the circumstances"). Furthermore, well-maintained files allow another attorney to provide subsequent representation to the client without prejudicing the client's interests. See M Bar R. 3.5(a)(2).

While we recognize that the amount of detail that any file contains will vary with the lawyer's practice style and the nature of the representation, we believe that attorneys should be guided by a standard of reasonableness, the end result of which is that a file, whether kept electronically or in hard copy, should contain material that another attorney or the client would reasonably need to take up representation of the matter. Most of that material will be substantively related to the representation, but it could also include materials that some might deem of an administrative nature if the information contained in those materials is reasonably necessary to protect or defend the client's interests.

Materials that Must Be Delivered To The Client

We turn next to an analysis of an attorney's obligation to deliver the file to the client. At the outset, we revisit Opinion #74 (10/1/86), which offered attorneys some guidance on the circumstances in which they may destroy client files.[1] We do so in order to highlight two general principles that we believe should guide attorneys in making decisions about the nature of the file documents to which the client is entitled. First, an attorney has an obligation to safeguard client property in the attorney's possession, even after representation ceases. Second, an attorney cannot destroy a file without the client's prior notice and consent if the file contains any information "of value" to a client.

We believe that the identification of these two principles – one dealing with client property and one dealing with valuable information – highlights an important point. We do not read Maine’s Code of Professional Responsibility to imply that all material created or maintained by an attorney necessarily becomes client property. We likewise do not take the approach, underlying a variety of formulations offered by some courts, state ethics bodies, and commentators, that attempts to condition the return of file information on categorizing the material as property belonging either to the client (which must be returned) or the attorney (which need not be returned).[2] If a particular document’s characterization as either client property or lawyer property were all that was required to determine an attorney’s obligation with respect to the file, Opinion #74 would have had no need to identify a category of “valuable property” – it could have discussed the attorney’s obligation simply by reference to Rule 3.6(e)(2)(iv), which requires a lawyer to safeguard client property and deliver client property to the client upon the client’s request. Similarly, if all material created or maintained by an attorney in the file is automatically considered client property, Opinion #74 would not have recognized that an attorney might destroy files in certain circumstances, even without client consent.

In sum, therefore, employing the two principles set out in Opinion #74, an attorney should deliver the client’s property and any material, not otherwise readily available to the client, that the attorney knows or has reason to know is or would be of value to the client. The attorney must assess value to the client in relation to the accomplishment of the services for which the attorney was retained.

Ascertaining Client Property and Valuable Information

We now offer guidance on how to ascertain what is and what is not client property and the factors that must be considered when attempting to determine what is or may be valuable information to a client.

We turn first to the category of client property. This category typically includes materials provided by the client to the attorney, whether the material has intrinsic value – *i.e.*, money, securities, or a promissory note – or value that is more dependent upon the particular item’s relationship to the legal matter for which the client seeks advice – *i.e.*, certain items of real evidence, documents such as tax returns and insurance policies, or the client’s own notes and research. Also included in this category is finished work

product that the attorney prepared for the client, and for which the client paid, such as contracts and estate planning documents.

In evaluating the second category of documents, information valuable to the client, we begin by describing those types of documents that ordinarily need not be provided to the client because they would not be helpful to the client in achieving the result for which the client retained the attorney. Those documents would ordinarily include:

- Time sheets and billing records.
- Internal administrative documents such as conflict checking forms and case assignment or staffing memoranda.[3]
- Internal memoranda that set out a lawyer's general impressions of the client and the matter, the options for staffing or handling a case, and certain internal firm business information.
- Drafts of documents except as noted below.

We next turn to identifying those categories of documents that ordinarily should be provided to the client.[4] They include:

- All pleadings.
- All correspondence.
- Research memoranda.
- Notes and memoranda concerning information obtained from client interviews, witness interviews, facts of the case, and communications with other parties on the matter.
- Certain drafts of documents (*e.g.*, where prior drafts advanced legal arguments that might still be used in the matter, or where important to show the history of negotiations or otherwise pertinent to the future understanding of the outcome of the matter[5]).

We also offer additional observations that should help guide attorney conduct, all of which suggest that the prudent course of conduct is for an attorney to err on the side of providing the client with documents, rather than culling and withholding them.

First, in order to determine what information is valuable to the client in relation to the accomplishment of the services for which the attorney was retained, the lawyer must assess the point in time when the client's request for the file is made and any information that the lawyer has regarding the reason for the request.[6] Thus, for example, an attorney's notes regarding potential witnesses to be interviewed in any litigated matter will be useful information before the trial, but may not be useful after the

trial has concluded and the witness's testimony has been reduced to a transcript. Similarly, a first draft of a pleading or contract may have little utility once the final pleading has been filed or the contract executed.

Second, when an attorney withdraws from representation during the pendency of a matter, the Maine Bar Rules require the lawyer to provide the client with all the information that the client needs so as to avoid "foreseeable prejudice." M. Bar R. 3.5(a)(2).

Third, whether a matter is ongoing or concluded, the touchstone of "foreseeability" referenced in Rule 3.5(a)(2) is important and embraces the idea that, as between the attorney and the client, the attorney is in a better position to assess the potential usefulness of any particular document to the client. The client should be able to depend upon the attorney's superior expertise in that respect.

Fourth, the fiduciary nature of the relationship between the lawyer and the client includes an obligation to be forthright and open, and to serve the interests of the client. It may be difficult for an attorney to maintain that he or she acted consistently with fiduciary obligations if documents are not provided to the client, but are later placed at issue in the course of the resolution of a legal or ethics dispute.

Finally, we offer several additional comments. There is nothing that prevents an attorney from maintaining at the attorney's expense, copies of all material provided to the client. We also see no reason to distinguish between materials stored electronically and materials kept in paper form. Thus, when deciding what material to maintain and return, attorneys should consider and evaluate material stored electronically. To aid in this process, attorneys and firms should consider developing file retention and disposition policies, and communicating those policies to clients at the outset of representation. Attorneys should also be mindful of substantive obligations that they may have under federal and state law with respect to document retention. For example, new provisions of the Sarbannes-Oxley Act impose significant criminal penalties on anyone who destroys documents "with the intent to impede, obstruct, or influence an investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States" 18 U.S.C. § 1519.

[1] Although we do not further address file destruction in this opinion, we note that newly-adopted Rule 3.4(a)(4) (eff. Aug. 1, 2004) offers some guidance on file retention and destruction. That Rule states that unless file material is returned to the client or is of intrinsic value, or as otherwise ordered by a court or by agreement between the lawyer and client, a lawyer must maintain “all information and data in the lawyer’s possession to which the client is entitled” “for a minimum period of eight (8) years.” The new Rule also recognizes that a file may contain materials “of intrinsic value” that may not be destroyed until “they are out of date and no longer of consequence.” We observe, however, that once an attorney has complied with Rule 3.4(a)(4) by delivering to the client “all information . . . to which the client is entitled,” the attorney’s decision regarding destruction of any remaining materials may be subject to rules of evidence, rules of civil procedure, and substantive law, all of which fall outside the scope of this opinion and our role in interpreting Maine’s Code of Professional Responsibility.

[2] We recognize that there is a wide divergence of opinions on this particular point. “A majority of courts have ruled that a document created by an attorney belongs to the client who retained him.” *Swift, Currie, McGhee & Hiers v. Henry*, 581 S.E.2d 37, 39 (Ga. 2003) (collecting cases). This approach is also captured in Section 46(2) of the Restatement (Third) of the Law Governing Lawyers, which requires a lawyer to “allow a client or former client to inspect and copy any document possessed by the lawyer relating to the representation, unless substantial grounds exist to refuse.” Restatement (Third) of the Law Governing Lawyers § 46(2) (2000). Under this analysis, documents may be withheld only if providing them would violate a duty to another; the lawyer concludes disclosure would harm the client; or they were reasonably intended only for internal review. *Id.* comment C. “By contrast, a minority (although a substantial number) of courts and State bar legal ethics authorities . . . distinguish between the ‘end product’ of an attorney’s services, the documents representing which belong to the client, and the attorney’s ‘work product’ leading to the creation of those end product documents, which remains the property of the attorney.” *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn*, 91 N.Y.2d 30, 689 N.E.2d 879, 666 N.Y.S.2d 985 (N.Y. 1997). The Commission here is taking neither approach, but one that is in between.

[3] We underscore here that, while under the Bar Rules an attorney may have no obligation to provide a client with administrative documents of this nature upon a client’s request for the file, a

court or tribunal could order an attorney to provide those documents if the attorney and the client are involved in a dispute that would render the documents relevant. Thus, an attorney should take care not to destroy such documents, if the attorney is on notice of potential litigation in which the documents might constitute relevant evidence.

[4] There may be documents that ordinarily should be provided to the client, but that might be withheld or screened in a particular case because of exceptional circumstances. For example, documents, or information within documents, the disclosure of which would violate a duty imposed by law or to a third party should be withheld. These would include documents that are subject to a confidentiality agreement imposed by a court that forbid disclosure to the client and entries in documents that contain confidential information concerning other clients and that therefore should be redacted. Material that might, in the attorney's reasonable judgment, cause significant harm to the client – for example, certain medical or psychiatric records that might be injurious to the client – can be withheld in limited circumstances (on this point, the Restatement (Third) of the Law Governing Lawyers states: “[A] lawyer who reasonably concludes that showing a psychiatric report to a mentally ill client is likely to cause serious harm may deny the client access to the report. Ordinarily, however, what will be useful to the client is for the client to decide.” Restatement (Third) of the Law Governing Lawyers § 46 comment C (2000)). Certain offensive personal statements made by witnesses or family members, not relevant to the legal matter for which the attorney was retained, might properly be withheld.

[5] Bar Rule 3.4(a)(4) underscores this point by requiring the retention of materials “that have intrinsic value in the particular version.” M. Bar R. 3.4(a)(4).

[6] If the client provides the attorney with the reason for the request, what will reasonably be of value to the client may be assessed in light thereof. For example, if the client merely wants to maintain for posterity a historical record of what took place in court, providing copies of pleadings alone might satisfy the client's request. On the other hand, if the client expresses no reason, and the attorney has any reason to believe that the client might want to review the entire case for any purpose whatsoever, or have it looked at by another attorney for a second opinion, then the attorney should provide the client with a copy of the entire file subject to our suggestions, *supra*.