

Handbook for a Trustee of the
Law Practice of an Unavailable (Disabled,
Deceased, Disciplined, or Disappeared)
Attorney

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Handbook for a Trustee
Of the Law Practice
Of an Unavailable Attorney

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**Handbook for a Trustee
of the Law Practice
of an Unavailable (Disabled, Deceased, Disciplined, or Disappeared) Attorney**

A. Introduction

In April 2014, the State Bar Council adopted the following policy affirming the State Bar's role in winding down the practice of a disabled, deceased, discipline, disappeared, or otherwise unavailable attorney:

The State Bar is the appropriate entity to initiate action to wind-down the practices of lawyers who appear unable to continue to serve and protect the interests of their clients, and for whom no law partner can act. Under such circumstances, the State Bar, by and through its staff, will when necessary and appropriate, seek the appointment of qualified members of the Bar as trustees pursuant to G.S. 84-28 (j) and 27 N.C.A.C. 1B, .0122, and support their efforts in winding-down the practices of the subject lawyers. Support shall consist of consultation and direction, as well as compensation in the event no other source of funds is available. Compensation shall be determined and paid by the Executive Director in his or her discretion. The Executive Director is also authorized to reimburse such expenses of the trusteeship as he or she deems reasonable and appropriate. The Executive Director shall report to the President, or to any committee he or she may designate, at least annually regarding the trusteeships that have been concluded since the last report, the trusteeships that remain active, and the expenditures that have been made or are contemplated. It is hereby recognized that the primary purpose of each trusteeship will be to protect the interests of the subject lawyer's clients, and that trusteeships will generally be administered to discontinue, rather than conserve or perpetuate, the practices involved.

This handbook is designed to assist an attorney who is appointed as the trustee of the law practice of an unavailable attorney. No single document or checklist can answer every question that a trustee will encounter, however. The following material is intended to answer some basic questions and provide sample forms for the trustee.

In many cases, questions will arise for which this handbook provides no answer. In those cases, trustees are encouraged to call the N.C. State Bar (919/828-4620) or their local senior resident superior court judge for guidance.

The State Bar greatly appreciates the service that trustees provide to the public and the profession by ensuring the orderly winding up of the law practices of unavailable attorneys.

B. When Should a Trustee Be Appointed?

The courts may appoint a trustee to protect the clients of any North Carolina attorney who is “missing, disabled, incapacitated or deceased.” N.C. Gen. Stat. § 84-28(j).

An attorney is “incapacitated” when he or she has been adjudicated as “mentally defective, an inebriate, mentally disordered or incompetent from want of understanding to manage his or her affairs by reason of the excessive use of intoxicants, drugs or other cause” by a court in this or any other jurisdiction. Discipline & Disbarment Rules of the North Carolina State Bar, 27 N.C.A.C. 1B, Rule .0103(23).

In contrast, an attorney is deemed to be disabled when he or she suffers from a “mental or physical condition, which significantly impairs the professional judgment, performance, or competence of an attorney.” *Id.*, Rule .0103(18).

An attorney can be “missing” for a number of reasons, including but not limited to the attorney’s disbarment or suspension from the practice of law, or the attorney’s unexplained disappearance from his or her professional practice.

Appointment of a trustee is usually not necessary if an unavailable (disabled, deceased, disciplined, or disappeared) attorney has a partner or associate who is willing and able to protect the interests of the attorney’s clients. In such a case, the partner or associate ordinarily is able to handle the situation without a formal court order appointing a trustee of the attorney’s law practice.

If the unavailable attorney has no partners or associates, however, it may be necessary for the court to appoint a trustee to wind down the unavailable attorney’s practice. The order of appointment gives the trustee the authority to enter the unavailable attorney’s office, review confidential client materials, execute signature authority for the attorney’s law practice-related trust and fiduciary account(s), and take other steps necessary to protect the unavailable attorney’s clients.

The State Bar considers a number of factors in determining whether to petition for appointment of a trustee of an unavailable attorney’s practice, including but not limited to the reason for unavailability, the size of the practice, and most importantly, circumstances indicating a need for prompt action to protect client interests. If you learn that another attorney has died or has become incapacitated or disabled, don’t hesitate to discuss your concerns with the president of your local bar or the legal staff or officers of the State Bar to determine if a trustee is needed to protect the unavailable attorney’s clients.

Regarding a declining attorney – that is, an active attorney who continues to practice despite suffering from ongoing mental or physical health issues that have not yet reached the level of a disabling condition under the State Bar Rules: The State Bar does not typically seek to appoint a trustee until an attorney is actually unavailable to his or her clients. A declining but actively licensed and actively practicing attorney who refuses to discontinue his or her practice remains available to his or her clients until the attorney is determined to be disabled or incapacitated

under the State Bar Rules. Accordingly, absent consent from the declining attorney, the State Bar is limited in its ability to petition for appointment of a trustee for an attorney who refuses to discontinue his or her practice, as such appointment effectively forces the attorney to terminate and wind-down his or her practice without due process. In such cases, anyone with information or concerns about a declining attorney is encouraged to contact the State Bar for the initiation and investigation of potential disciplinary or disability proceedings against the declining attorney. At the conclusion of such proceedings, if the attorney is required to discontinue his or her practice for any reason, the State Bar will be able to petition for appointment of a trustee. In addition to contacting the State Bar regarding a declining attorney, individuals are encouraged to report information and/or concerns to the Lawyer Assistance Program, Lawyers Mutual, and the North Carolina Bar Association's Transitioning Lawyers Commission.

Similarly, an attorney who enters a short-term substance abuse treatment program may not need a trustee appointed absent circumstances indicating an imminent threat to client interests. As the purpose of the trusteeship is to wind-down and terminate a practice, an attorney who has a trustee appointed for his or her practice after entering a short-term substance abuse treatment program may find him or herself without a practice to resume upon completing the program. Prior to entering the program, the attorney should make efforts to a) inform members of the local judiciary and of the local bar about the attorney's anticipated absence, and b) conserve the practice for the duration of the program, which may include obtaining continuances prior to the attorney's absence or soliciting local attorneys' assistance with pending cases during the absence. Often, the Lawyer Assistance Program is able to lend assistance with this process, and attorneys (both those entering the program and those who are concerned about their peers) are encouraged to contact LAP for guidance.

C. Appointment of the Trustee

1. Selecting a Trustee

North Carolina's general statutes do not specify whom the court should appoint as trustee of an unavailable attorney's law practice. Any attorney who practices in the unavailable attorney's judicial district, is in good standing with the Bar, and is willing to perform the duties of a trustee is eligible for appointment. The trustee need not have the same kind of practice as the unavailable attorney, and there is no minimum level of experience required to qualify as a trustee. Depending upon the amount of work to be done, it may be wise to have two or even three trustees appointed.

Upon learning of an attorney's unavailability and determining the need to appoint a trustee, the State Bar will ask the local court, the local State Bar Councilor, or other local attorneys for recommendations on who should serve as trustee. If you are reporting the need for a trustee to the State Bar, it is helpful to provide the Bar with at least one possible candidate to serve as trustee. Ultimately, while the State Bar proposes a particular individual be appointed as trustee for a law practice, the decisions to a) appoint a trustee and b) appoint a particular individual as trustee are left to the court's discretion.

2. Filing the Petition

The N.C. State Bar will often file a petition for appointment of a trustee to wind-down the unavailable attorney's law practice at the request of the senior resident superior court judge, a member of the local bar, a member of the unavailable attorney's family or the proposed trustee. N.C. Gen. Stat. § 84-28(j). The court may also proceed on its own motion. Id.

The petition should be addressed to the senior resident superior court judge of the district in which the unavailable attorney last resided or maintained a law office. Id. The petition should include the name of the proposed trustee(s) and a statement of the grounds necessitating appointment of a trustee. A sample petition is included in these materials as Ex. 1.

If you learn of a situation in which a trustee may be needed, and would like the State Bar to file an appropriate petition, call the Office of Counsel at (919) 828-4620 and ask for one of the staff attorneys.

3. Entering the Order

The order appointing a trustee of an unavailable attorney's law practice must be signed by the senior resident superior court judge in the county where the unavailable attorney last resided or maintained a law office. N.C. Gen. Stat. § 84-28 (j). The trustee will serve until released by order of the court. A sample order appointing a trustee is attached as Ex. 2.

D. Duties of the Trustee

Introduction

The trustee's most important duty is to protect the interests of the unavailable attorney's clients while winding down/discontinuing the unavailable attorney's practice. What is required of a trustee in carrying out this primary duty can vary widely. In some cases, the unavailable attorney's practice was not active and little needs to be done to protect his or her clients. In other cases, particularly where the attorney had a large practice or disappeared suddenly, the trustee's job may be complicated and time-consuming. Regardless of the size or state of the abandoned practice, the trustee's duties can be summarized as consisting of two primary responsibilities: 1) Client Notification; and 2) Returning client property.

1. Client Notification

a. Getting Access to the Office & Client Files

After the order of appointment is signed, the trustee should immediately secure the files of the unavailable attorney's clients. If necessary to ensure the security of the files, the trustee should remove the unavailable attorney's files to the trustee's office or other safe location.

Ordinarily, getting into the unavailable attorney's office is not a problem, once the court has named the trustee. Relatives of the unavailable attorney, a secretary or executors of the estate usually will provide the trustee with a key and access to the unavailable attorney's office.

In a few cases, however, a trustee has been forced to seek a court order authorizing the trustee to gain access to the unavailable attorney's law office with the help of a locksmith. If a trustee encounters a problem getting access to the unavailable attorney's files or office, the trustee should call the court or the N.C. State Bar.

b. Reviewing Client Files

First, the trustee should review the unavailable attorney's files to determine which are active and which are closed. The trustee should keep a list of the files that have been reviewed, the status of the case, the client's contact information, and what was done with the file. This list ultimately may be attached to the petition seeking discharge of the trustee when the wind down of the unavailable attorney's practice is complete. See Ex. 3, attached.

Rule .0122(b) of the Discipline and Disbarment Rules of The North Carolina State Bar, 27 N.C.A.C. 1B, provides that a trustee appointed to wind-down the files of a unavailable attorney is not permitted to disclose any information contained in the clients' files unless necessary to carry out the trustee's duties.

c. Contacting Clients

Next, the trustee should contact each client who has an active matter pending to notify the client that the unavailable attorney is no longer able to handle the client's case. If time permits, it is usually better to contact the clients in writing, as this creates a permanent record. In any event, the client should be advised that their attorney is no longer available, that they need to select another attorney, and that they need to make arrangements to pick up his or her file. A sample notification letter to clients is attached as Ex. 4.

It is often impossible to contact all of the unavailable attorney's clients. In this case, the trustee may place a notice in the local newspaper directing clients of the unavailable attorney to contact the trustee. Such a notice should also advise clients whose files are closed to retrieve their files. A sample notice is attached as Ex. 5.

Clients often ask trustees the reason(s) for their prior attorney's unavailability. Out of respect to the unavailable attorney, trustees are encouraged not to disclose any information regarding the unavailable attorney's situation or circumstances beyond what is cited in the order appointing the trustee or any other public document.

d. Protecting the Clients' Interests; Limited Appearances

While the trustee is attempting to contact clients, waiting for clients to pick up their files, or waiting for clients to select a new attorney, the trustee may need to take action in clients' pending cases to ensure their interests are protected. Such action can include filing motions for continuances or attending calendar call. In many cases, the trial court administrator will help with calendaring problems. Local judges are sometimes willing to sign blanket orders continuing all of the unavailable attorney's pending cases. The type and extent of action taken by the trustee in a particular client's case is left to the discretion of the trustee, and the State Bar

is available to discuss with the trustee what action should be taken, if necessary. To be clear, however, the trustee is not required or expected to act as attorney for the unavailable attorney's clients or provide legal services other than those necessary to prevent harm to the clients until they obtain other counsel, and the trustee will not be reimbursed for taking substantive action in a client's case beyond that which is necessary to protect the client and effectuate the client's transition to new representation. If the trustee decides to take action in a particular client's case, the trustee should make clear to the client, the court, and opposing counsel/the opposing party that any action taken or appearance made by the trustee in a client's case is a limited appearance as trustee of the unavailable attorney's practice, not as an attorney for the client, and that the purpose of such limited appearance is solely for the protection of the client's interests during this transitional period.

The client of an unavailable attorney may retain the trustee for representation, but any such retention is outside the scope of the trusteeship and is left to the discretion of both the client and the attorney appointed as trustee.

e. Recommending New Attorneys

Often, the unavailable attorney's clients will ask the trustee to continue the unavailable attorney's representation or to recommend successor counsel. The trustee should feel free to make recommendations, so long as it is clear that the selection of successor counsel is entirely the client's decision. In many districts, local bar members will agree to complete the unavailable attorney's pending matters at no additional charge to the clients. Alternatively, in cases where the unavailable attorney owes a refund to his or her clients and is available in a limited capacity to successor counsel, the unavailable attorney may agree to compensate successor counsel at an agreed upon rate. Additionally, as noted above, the trustee may agree to serve as the attorney for a former client of the unavailable attorney, although the trustee is not required to do so. Prior to doing so, the trustee should ensure the client is aware that he or she has a right to choose successor legal counsel. No client file should be sent to a successor attorney without the client's prior approval and direction. Before transferring a client's confidential file to a successor attorney (even if the successor is the trustee himself or herself), the trustee should obtain the client's written permission for the transfer of the confidential client file and any other confidential information in the unavailable attorney's possession.

2. Returning Client Property

Returning client property primarily consists of providing the client with physical property (namely, the client file) possessed by the unavailable attorney's practice as well as providing the client with any funds (namely, entrusted funds deposited in the attorney's trust account) possessed by the unavailable attorney's practice.

a. Delivering Files to Clients with Active Cases

As stated above, the trustee's priority in winding-down the unavailable attorney's practice is protecting client interests, particularly the interests of clients who had active cases/representations at the time their attorney became unavailable. After completing the initial

review of client files in the unavailable attorney's practice and notifying active clients of the need to select new counsel and pick up his or her client file, the trustee will need to arrange for active clients to receive his or her client file, which may include making copies of files or documents (see below). The trustee should make significant effort to return all active files to the respective clients; as discussed below, the trustee should exercise discretion in pursuing the notification and return of client files to inactive clients. When a client picks up his or her file, the trustee must ensure that all of the client's materials are returned to the client. The Rules of Professional Conduct provide that all documents in the file belong to the client, with the exception of incomplete attorney work product and the unavailable attorney's personal notes. See comment 10, Rule 1.16 of the Rules of Professional Conduct. Consequently, completed pleadings, motions, briefs, and evidence such as doctor's reports and similar materials must be returned to the client. This is so even if the client had not paid the unavailable attorney or the unavailable attorney's estate for work done for the client.

When the unavailable attorney's clients pick up their files, the trustee should ask each client to sign a release, indicating that the file has been received. A sample release is attached as Ex. 6. The trustee should require clients to produce appropriate identification before releasing file materials. Absent 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 with the client's consent. The trustee should keep proof of delivery of the file. Mailing files to the unavailable attorney's clients can be expensive, however, and trustees are encouraged to have clients pick up files in person if possible.

b. Copying Files

The trustee is granted discretion in determining whether a particular client file or client document should be copied and preserved before the original contents are returned to the client. Keeping copies can protect both the unavailable attorney (or the estate of the unavailable attorney) and the trustee from claims by former clients. It may not be necessary to copy closed files or to copy some items, such as depositions, in active files. If you have a question about whether copies of records from a file should be made in a specific situation, call the N.C. State Bar, or consult the resident superior court judge in the unavailable attorney's judicial district. If copies of file materials are made, the cost must be charged to the unavailable attorney or the estate of the unavailable attorney, rather than to the client.

c. Closed Files

The trustee should exercise discretion in determining what action to take with regards to closed client files. The trustee may consider a number of factors in deciding whether to contact clients whose files have been closed, including but not limited to the age of the file, the content of the file (such as whether the file contains original estate documents, etc.), and the amount of closed/inactive files in the unavailable attorney's possession. For example, if the unavailable attorney retained a large volume of inactive client files, the trustee need not locate and contact

every inactive client; instead, the trustee may choose to notify inactive clients of their need or ability to pick up their closed client files via public notice (usually in the local newspaper) with a deadline for file collection, after which unclaimed files will be deemed abandoned and destroyed. In another example, if a closed file contains an original will, the trustee may need to attempt locating the client to deliver the sensitive document, if not the entire client file. When uncertain about what efforts, if any, should be made to contact inactive clients and/or return closed client files, the trustee should contact the State Bar or the court for further guidance.

d. Disposition of Files

When the trustee has delivered all client files or concluded his or her attempt to deliver client files, there will likely remain a number of unclaimed client files. The trustee generally has two options for dealing with unclaimed client files: 1) Arrange for long-term storage of the files, or 2) Destroy the files. The eventual disposition of unclaimed client files will depend on a number of factors, including the age of the files, the amount of the files, the content of the files, and the availability of storage options. The trustee should seek guidance from the State Bar and/or the court in determining the proper course of action for unclaimed client files. In most cases, the trustee can publish a notice in the local newspaper to all clients of the unavailable attorney informing them that their client files are available for pickup by a specific deadline, after which the files will be deemed abandoned and destroyed. After such notice is published, and after the clients have been afforded ample time to pick up their client files, the trustee should petition the court for an order deeming all unclaimed files abandoned and ordering their destruction to preserve client confidences. When the trustee discovers original estate documents in the unclaimed client file(s), and the trustee has been unsuccessful in locating the client(s), the trustee should make some attempt to preserve such sensitive original documents, either with the Clerk of Court or some other office or facility. Again, the trustee should consult the State Bar or the court for guidance in preserving original estate documents discovered in unclaimed client files.

e. Dealing with the Unavailable Attorney's Office Account

Ordinarily, the trustee will have no duties regarding the unavailable attorney's office or business account, since no client funds should be present in such an account. The trustee's chief obligation is to protect the interests of the unavailable attorney's clients by distributing files as quickly as possible. Clients who believe that they are owed a refund of fees that may be in the office account should be encouraged to seek independent legal counsel to resolve those matters. The trustee should not act as an advocate for the clients in fee dispute matters. Similarly, the trustee is not obligated to take extraordinary steps to collect fees owed to the unavailable attorney.

Funds in the office account presumptively belong to the unavailable attorney (or his/her estate), but such funds may be used to pay outstanding obligations of the practice or the trustee's expenses relating to the wind-down of the practice. Before taking any action regarding an unavailable attorney's office account, the trustee should consult the court or the N.C. State Bar. If the attorney in question is deceased, the trustee should also contact the representative of the estate of the unavailable attorney.

f. Dealing with the Unavailable Attorney's Trust Account

Trustees often have duties relating to disposition of funds in the unavailable attorney's trust account or other fiduciary accounts. Pursuant to Rule 1.15-2 of the Rules of Professional Conduct, the unavailable attorney's trust account should contain only client funds and a minimal amount to cover bank service charges.

The trustee should make the first attempt to reconcile all accounts and identify all funds contained in the unavailable attorney's trust account(s). The trustee should first review the unavailable attorney's trust account records, reconcile the monthly bank statements and bring client ledger cards up to date. If the unavailable attorney had a secretary or bookkeeper, this individual is often able to perform most of the auditing tasks under the supervision of the trustee. The State Bar's staff investigators may also be able to assist, if necessary.

After the trustee determines the ownership of the funds in the unavailable attorney's trust account, the trustee should file a petition requesting the court to authorize the trustee to disburse funds to the client-owners. The trustee should provide the court with a proposed disbursement plan in his or her petition. If the court orders a hearing on the matter, all clients who have a claim against funds in the unavailable attorney's trust account should be notified of the hearing on the motion to disburse funds from the account if for any reason there is not enough on deposit in the trust account to pay all claims. No funds should be disbursed to clients or any other third party without first obtaining a court order. The need for a court order can cause frustration for clients and third parties who are owed funds from the trust account, but their urgency and/or frustration with the trustee process does not outweigh the need for judicial approval of any such disbursements. A sample petition is attached as Ex. 7. A sample order is attached as Ex. 8.

Special problems arise in those cases in which it appears that the unavailable attorney may have misappropriated funds from his or her trust account. If the misappropriation was discovered before the trustee was appointed, the State Bar probably has obtained an order "freezing" the unavailable attorney's trust account. In such a case, no funds may be disbursed from the trust account, except pursuant to an order from the court that entered the restraining order. In these cases, the trustee should work closely with the N.C. State Bar staff to determine ownership of the funds remaining in the trust account. The State Bar usually takes responsibility for filing the petition to disburse funds from the "frozen" trust account. The trustee may be called upon to help notify clients of the petition and to serve as liaison between the clients, the N.C. State Bar and the Client Security Fund.

If the trustee discovers independent evidence of misappropriation of client funds by a unavailable attorney, the trustee should contact the N.C. State Bar or the senior resident superior court judge immediately.

The trustee is only able to disburse the funds remaining in the unavailable attorney's trust account(s). Accordingly, if a client claims he or she is owed additional funds from the unavailable attorney, the trustee will be limited in the assistance or resolution he or she can provide to the client. In such a case, the trustee should inform the client that he or she can contact another attorney to explore any legal options the client may have in recovering the

allegedly missing funds from the unavailable attorney or the unavailable attorney's estate. Additionally, the trustee can inform the client to submit a claim to the State Bar's Client Security Fund, which exists to reimburse victims of attorney theft. If a client continues to be disagreeable with the trustee, the trustee is encouraged to contact the State Bar for further guidance.

g. Limited Handling of Entrusted Funds; Disposition of Fees

On occasion, a trustee will discover a settlement check in the unavailable attorney's office or the trustee will receive entrusted client funds following the resolution of a case just prior to being appointed as trustee. In these situations, the trustee should deposit the entrusted client funds into the unavailable attorney's trust account and prepare to disburse the funds in accordance with the client's settlement instructions, including the satisfaction of any perfected liens. The trustee should also prepare to disburse the unavailable attorney's fee to the unavailable attorney (or his/her estate, if applicable) or the unavailable attorney's operating account, as such fee is presumed earned by the unavailable attorney.

The trustee may also discover upon reviewing the unavailable attorney's practice that a client's case was nearly but not fully resolved prior to their attorney's unavailability. Although the trustee is never expected to resume any of the unavailable attorney's representations as a result of the trusteeship, it remains in the discretion of the trustee to offer his or her services in completing the representation for the client. With the client's permission, the trustee may take whatever final steps remain to resolve the client's case. If such a resolution results in the receipt of settlement or other entrusted funds from which the unavailable attorney would be owed a contingency fee, the trustee should deposit the entrusted funds into the unavailable attorney's trust account and prepare to disburse the funds in accordance with the client's instructions, including disbursing quantum meruit shares of the contingency fee to the unavailable attorney and the trustee.

As with any other entrusted funds handled by the trustee, the trustee should not make any disbursement in these scenarios until authorized by order of the court. The trustee is encouraged to contact the State Bar or the court for guidance in these situations.

E. Getting Paid

Administering the law practice of a unavailable attorney can be costly and time consuming. The court can award payment of counsel fees to a trustee appointed to wind-down the practice of a deceased attorney. These fees are paid from the deceased attorney's estate and are considered an administrative expense of the estate. N.C. Gen. Stat. Section 84-28(j). A sample letter to be filed with the Executive/Personal Representative of the deceased attorney's estate is included as Ex. 9. In other cases, it is the N.C. State Bar's policy to pay a modest fee to the trustee. Trustees appointed to wind-down the practices of missing, disabled or incapacitated lawyers should contact the Executive Director of the State Bar upon their appointment to discuss payment of their fees and expenses.

In all cases, the trustee should keep track of his or her time and the expenses incurred in winding-down the unavailable attorney's practice. The trustee should also record time spent by clerical staff, which may also be reimbursed.

In discharging his or her duties, the trustee should be as frugal as possible by, among other things, hiring support staff to do the clerical work and securing inexpensive office and storage space. In some cases, the trustee may be able to use the unavailable attorney's office and support staff. The trustee should avoid using assistants who are beneficiaries of the unavailable attorney's estate as such individuals would gain access to client files which may contain information necessary to file a claim against the estate.

F. Reporting to the Court & Discharge

The trustee's last duty is to report his or her activities to the court and file a petition to be discharged as trustee of the unavailable attorney's practice. The contents of the petition will vary, depending upon the services performed by the trustee. A sample petition is attached as Ex. 10. At a minimum, the petition should contain a list of files distributed to the clients and a discussion of how the other files were handled. If trust funds were disbursed, a record of the disbursements should be included, so that the court can approve disbursement, if it has not already done so.

In many cases, when a trustee completes his or her duties, there are a number of files left on hand, which no client has claimed, or which are closed. In some districts the local bar office or the clerk of court may be willing to house the unclaimed files for a period of time; the State Bar generally does not store unclaimed client files. The trustee should seek some guidance from the court regarding disposition of any unclaimed file. The court may wish to include a provision regarding the files in the order of discharge, including but not limited to a determination that any unclaimed files are deemed abandoned and such files should be destroyed upon conclusion of the trusteeship.

After the trustee is discharged, he or she should provide a signed copy of the order of discharge to the N.C. State Bar. A sample order is included as Ex. 11.

G. Conclusion

Acting as trustee of the practice of an unavailable (disabled, deceased, disciplined, or disappeared) lawyer can be a difficult and time-consuming matter. However, it is often a very rewarding experience, as the trustee has the satisfaction of rendering a great service to the public and the other members of the Bar. Each trustee's experience and problems are unique and it is impossible to answer every question ahead of time. Every trustee should feel free to telephone the N.C. State Bar any time a problem arises, however. We're here to help.

CHECKLIST OF DUTIES OF TRUSTEE
OF LAW PRACTICE OF MISSING, INCAPACITATED, DISABLED OR DECEASED
ATTORNEYS

1. Enter unavailable attorney's law office and, if necessary, remove files to a safe place.
2. Inventory the files to determine which are active and which are inactive. Keep a list of the files reviewed with a summary containing the name of the client, the client's contact information, nature of the file, work done by the trustee, and disposition of the file.
3. Send a letter to each client who has an active matter pending with the unavailable attorney. The letter should notify the client of the need to select substitute counsel and to retrieve the file. Consider also placing a notice in the local newspaper.
4. Take steps to preserve rights of clients while the client is arranging for substitute counsel. Often one telephone call to opposing counsel, explaining the problem, is sufficient.
5. Distribute files to clients, as the clients direct. Keep records of how and to whom the files are distributed. Follow the court order regarding the disposition of unclaimed files.
6. If there are funds in the unavailable attorney's trust account, reconcile the trust account records to determine ownership of the funds.
7. In appropriate cases, disburse funds belonging to clients from the trust account after filing a motion, giving notice to claimants if necessary and obtaining a proper order approving the disbursement.
8. Keep track of services provided by the trustee and assistants, along with expenses incurred.
9. Submit a final report to the Court and petition for discharge.
10. Send a copy of the order of discharge to the N.C. State Bar.

WHAT IF?
QUESTIONS TRUSTEES FREQUENTLY ASK

Q. Some of the members of the local Bar have agreed to handle the unavailable attorney's pending files. Can I box up the files and send them over to these attorneys?

A. The trustee should not release a client file to successor counsel without first obtaining the client's consent. The file belongs to the client and likely contains confidential information. The trustee should help protect the clients' confidences and the clients' right to select successor counsel.

Q. The unavailable attorney had a large practice and kept all of his files for years. Surely the State Bar doesn't expect me to photocopy all of these materials?

A. It is often desirable for the trustee to retain copies of active files, in case a claim is made against the unavailable attorney or the estate of the unavailable attorney or if questions arise later. This is particularly true if the unavailable attorney was disbarred. However, this is not always practical. The trustee should consult with the N.C. State Bar or the senior resident superior court judge when it appears that making copies of active files is impossible or impractical.

Q. I am about to be discharged as trustee of an unavailable attorney's practice and I have a large number of file materials that have never been picked up by the clients. What should I do with them?

A. The practice varies from district to district within the state. Call the clerk of court in the unavailable attorney's county and see if the court will agree to store the files for a period of time. Alternatively, the files may be stored in rented space or another attorney's office. The court's and the State Bar's guidance should be sought regarding the disposition of files including closed or inactive files. The order discharging the trustee should contain some provision regarding storage of files and/or destruction after a designated period of time.

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

A. Get an order from the court authorizing you to endorse the unavailable attorney's name to 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 unavailable attorney's trust account. Have the court authorize disbursement of the funds, including approving payment of the unavailable attorney's fee to the unavailable attorney's estate or office account.

Q. I was just appointed trustee of an unavailable attorney's law practice. This is going to be more time consuming than I thought. Am I going to get paid for any of this? What about my clerical assistant.

A. If the attorney in question is deceased, the trustee should first apply to the estate for reimbursement of his or her time and expenses. See G.S. 84-28(i). If the estate is insolvent, and in the cases of missing, disabled and incapacitated attorneys, it is the policy of the State Bar to pay the reasonable expenses of the trustee. Call the State Bar to discuss the particulars of your case.

Ex. 1

STATE OF NORTH CAROLINA
COUNTY NAME COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE SENIOR RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT

IN RE: UNAVAILABLE ATTORNEY,
ATTORNEY AT LAW.

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)
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VERIFIED PETITION FOR ORDER
APPOINTING TRUSTEE

Pursuant to N.C. Gen. Stat. § 84-28(j) and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0122 of the Discipline & Disability Rules of the North Carolina State Bar, the North Carolina State Bar, by and through its Director, petitions and requests the Senior Resident Superior Court Judge of the JD# Judicial District to enter an order appointing a member of the Judicial District Bar to serve as trustee of the law practice of unavailable Attorney due to his [death, disappearance, disability, disbarment]. In support of this petition, the North Carolina State Bar shows the Court as follows:

1. According to the records of the North Carolina State Bar, unavailable Attorney was licensed to practice law on <date>. At the time of his death, unavailable Attorney practiced law in County Name County, North Carolina.

2. According to the records of the North Carolina State Bar, the last address of record for unavailable Attorney is <address>.

3. Unavailable Attorney practiced law at <address>.

4. On or about <date> unavailable Attorney [died, was disabled was disbarred or disappeared, etc.]

5. As of the date of this petition, unavailable attorney represented North Carolina clients whose interests need protecting.

6. Unavailable attorney had no partners or associates capable of winding down his law practice and ensuring that the interests of his clients and/or former clients are protected.

7. On information and belief, there remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of unavailable Attorney. At the time of his [death disability, disappearance], unavailable Attorney had no partners or associates

capable of carrying out his obligations under Rules 1.15-1 through 1.15-3 of the Rules of Professional Conduct.

8. Trustee Name, an attorney licensed to practice in North Carolina and a member in good standing of JD# Judicial District Bar, has indicated that he is willing to serve as trustee of the North Carolina law practice of unavailable Attorney, pursuant to Section .0122 of the Discipline & Disability Rules of the North Carolina State Bar, for the purpose of protecting the interests of unavailable Attorney's clients.

9. Trustee Name's mailing address is: <address>.

WHEREFORE, the Petitioner prays for:

1. An order appointing Trustee Name, an attorney licensed to practice in North Carolina and a member in good standing of JD# Judicial District Bar, to serve as trustee of the law practice of unavailable Attorney, and authorizing Trustee Name to gain possession of unavailable Attorney's client files, to secure unavailable Attorney's trust and/or fiduciary accounts, to gain possession of unavailable Attorney's attorney trust and/or fiduciary account records (including all bank statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards) and to take such actions as are necessary to protect the interests of the clients and/or former clients of unavailable Attorney; and

2. For such other and further relief as the Court deems appropriate.

Respectfully submitted, this the ____ day of _____, 2015.

A. Root Edmonson
Deputy Counsel
The N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611
(919) 828-4620

VERIFICATION

I, L. Thomas Lunsford, after being first duly sworn, depose and say as follows:

1. I am the Director of the North Carolina State Bar.

2. As Director of the North Carolina State Bar, I am an official custodian of the records of the North Carolina State Bar.

3. As an official custodian of the records, I hereby certify that the records of the North Carolina State Bar reflect the facts attributed to those records set forth in the foregoing Petition.

4. I hereby certify that the facts set forth upon information and belief are believed to be true by the Petitioner.

5. I hereby indicate my request for the appointment of an attorney licensed to practice law in North Carolina as trustee for the law practice of [deceased, disabled, missing, disbarred attorney], **unavailable Attorney**, to gain possession of **unavailable Attorney's** client files, to secure **unavailable Attorney's** trust and/or fiduciary accounts, to gain possession of **unavailable Attorney's** attorney trust and/or fiduciary account records and funds, and to protect the interests of **his** clients and/or former clients.

This the _____ day of _____, 2015.

L. Thomas Lunsford, Director
The North Carolina State Bar

Subscribed and sworn before me

This the ___ day of _____, 2015.

Notary Public

My commission expires:

Ex. 2

STATE OF NORTH CAROLINA

COUNTY NAME COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE SENIOR RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT

IN RE: UNAVAILABLE ATTORNEY,)	
ATTORNEY AT LAW)	ORDER APPOINTING TRUSTEE
)	
)	

THIS CAUSE coming before the Senior Resident Superior Court Judge of the JD# Judicial District, pursuant to N.C. Gen. Stat. § 84-28(j) and 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0122 of the Discipline & Disability Rules of the North Carolina State Bar, upon the verified petition of the North Carolina State Bar for an order appointing a trustee of the law practice of unavailable Attorney, owing to his [death, disappearance, disbarment, disability]; and based upon the petition before the Court, the undersigned makes the following:

FINDINGS OF FACT

1. According to the records of the North Carolina State Bar, unavailable Attorney was licensed to practice law on <date>. At the time of his [death disability, disbarment, disappearance], unavailable Attorney practiced law in County Name County, North Carolina.
2. According to the records of the North Carolina State Bar, the last address of record for unavailable Attorney is <address>.
3. Unavailable Attorney [died, was disabled, was disbarred or disappeared] on <date>.
4. At the time of his [death, disability, disbarment; disappearance] unavailable Attorney had no partners or associates capable of winding down his law practice and ensuring that the interests of his clients and/or former clients are protected.
5. There remain funds belonging to clients or third parties on deposit in trust or fiduciary accounts held solely in the name of unavailable Attorney. At the time of his [death, disability, disbarment, disappearance] unavailable Attorney had no partners or

associates capable of carrying out **his** obligations under Rules 1.15-1 through 1.15-3 of the Rules of Professional Conduct.

6. **Trustee Name**, an attorney licensed to practice in North Carolina and a member in good standing of **JD#** Judicial District Bar, has indicated that **he** is willing to serve as trustee of the North Carolina law practice of **unavailable Attorney**, pursuant to Section .0122 of the Discipline & Disability Rules of the North Carolina State Bar, for the purpose of protecting the interests of **unavailable Attorney's** clients.

7. **Trustee Name's** mailing address is: **<address>**.

BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this cause pursuant to N.C. Gen. Stat. § 84-28(j).

2. **Unavailable Attorney**, has [died, become disabled, disbarred or disappeared] and has no partners or associates, necessitating the appointment of a member of the **JD#** Judicial District Bar as trustee of **unavailable Attorney's** law practice, to gain possession of **unavailable Attorney's** client files, to secure **unavailable Attorney's** trust and/or fiduciary accounts, to gain possession of **unavailable Attorney's** trust and/or fiduciary account records (including all bank statements, all canceled checks [front and back], all deposit slips, all check stubs and all client ledger cards), and to take such actions as are necessary to protect the interests of the clients and/or former clients of **unavailable Attorney**.

THE COURT THEREFORE ORDERS THAT:

1. **Trustee Name**, an attorney licensed to practice law in North Carolina and a member in good standing of the **JD#** Judicial District Bar, is hereby appointed trustee of the law practice of **unavailable Attorney**.

2. As Trustee, **Trustee Name** is authorized to take such actions as are necessary to obtain possession of any known client files of **unavailable Attorney** and shall notify **unavailable Attorney's** clients of **his** [death, disability, disbarment or disappearance] and their need to obtain new counsel. **His** duties as trustee shall include receiving calendar notices and moving for appropriate continuances in the various courts; returning files to **unavailable Attorney's** clients and/or former clients; obtaining all records related to **unavailable Attorney's** trust and/or fiduciary account(s); supervising the disbursement of funds from any trust and/or fiduciary accounts to the appropriate persons; and any other act necessary to wind down **unavailable Attorney's** practice and protect the interests of **unavailable Attorney's** clients until all known clients have secured other legal counsel, have chosen to pick up their files and have received all money held in trust for their benefit. As Trustee, **Trustee Name** is authorized to take such actions as are necessary to

identify **unavailable Attorney's** trust and fiduciary accounts, as such accounts are defined in Rule 1.15-1 of the Rules of Professional Conduct, and to obtain possession of **unavailable Attorney's** trust account and fiduciary account records. As Trustee, **Trustee Name** shall take such actions necessary to identify the ownership of any funds in such accounts so that the clients/beneficiaries may be reimbursed, or their funds forwarded as they may direct. As Trustee, **Trustee Name** shall maintain adequate accounts of the funds held in **unavailable Attorney's** attorney trust or fiduciary accounts and shall account to the Court for approval annually or at the completion of the disbursement of the funds. **He** shall be discharged as Trustee upon the completion of **his** duties.

3. As Trustee, **Trustee Name** is hereby authorized to take such actions as are necessary to secure **unavailable Attorney's** trust and fiduciary accounts, including, but not limited to, executing new directives regarding signatory authority over such accounts. As Trustee, **Trustee Name** is also authorized to obtain records relevant to **unavailable Attorney's** attorney trust and/or fiduciary accounts from all financial institutions where accounts in which funds of client or fiduciary funds have been or are deposited by or in the name of **unavailable Attorney**, and to execute authorizations directing such financial institutions to release copies of all relevant records relating to such accounts to representatives of the North Carolina State Bar.

4. This cause is retained for further orders of this Court.

This the ____ day of _____, 2015.

Honorable **<name>**
Senior Resident Superior Court Judge
JD# Judicial District

[ADD IN CASES OF DECEASED ATTORNEYS]

Trustee Name, as trustee, is to be entitled to be paid for the services rendered from the estate of **unavailable Attorney** and to be reimbursed for all reasonable expenses, including expenses for employment of assistants, and shall file a statement with the court for approval of the fees and expenses which will then be submitted to the resident superior court judge for payment from the estate of **unavailable Attorney**.

Ex. 3

Client Files Inventoried by Trustee

<u>Client Name</u>	<u>File No.</u>	<u>Nature of Legal Matter</u>
William Bell	88 CRS 4011	DWI appeal (Closed)
Martha Drake	None	Will (original in file)
John Jones	93 CVD 101	Divorce, equitable distribution (open)
Sally Smith	89 CVS 13	Personal injury; settled in 1990 (closed)

Ex. 4

Date

Client Name

Client Address

Re: unavailable Attorney

Dear []:

As you may know, unavailable Attorney has [died, was disbarred, has become disabled or is missing]. Pursuant to a court order entered by the Honorable [] on <date>, I have been appointed trustee of the law practice of unavailable Attorney. As trustee, I am responsible for ascertaining the status of unavailable Attorney's active cases, obtaining unavailable Attorney's client files and returning these client files to their rightful owners, and ascertaining the status of unavailable Attorney's trust accounts and disbursing any remaining entrusted funds to their rightful owners.

As trustee, I do not represent you or any of unavailable Attorney's former clients. You should immediately make arrangements to retain a new attorney to represent you regarding any ongoing legal matters in which you are engaged if you have not already done so. If you would like the names of attorneys who might be willing to assist you, please let me know.

As trustee, I have in my possession unavailable Attorney's client files. Please make arrangements to come by to pick up your file as soon as possible. Please call before you come so that we may have your file ready when you arrive. Before I deliver your file to you or send your file to your new attorney upon your direction, you must sign a written release authorizing its transfer and acknowledging receipt of the file. As a matter of security, please bring some form of identification, so that we may avoid releasing files to unauthorized persons.

Files that are not picked up will be disposed of by court order.

Thank you for your cooperation.

Sincerely yours,

Trustee of Law Practice of unavailable Attorney

[Include following paragraph only if unavailable attorney has been disbarred for misappropriation of client funds.]

[If you believe that you lost money as the results of dishonest conduct of unavailable Attorney, you may wish to file a claim with the Client Security Fund of the N.C. State Bar. Before pursuing a claim with the Fund, the client should exhaust all other remedies

available to recover the money lost. The Client Security Fund is not obligated to pay any claims and has discretion to determine the amount and manner of any payments made. If you wish to obtain a claim form or to discuss a claim, you may contact the N.C. State Bar, P.O. Box 25908, Raleigh, NC 27611, 919 828-4620.]

Ex. 5

NOTICE

Trustee Name, the court appointed trustee for the law practice of **unavailable Attorney**, hereby notifies the public and members of the **JD#** district bar that **unavailable Attorney's** client files are begin held at **<address>**. Clients of **unavailable Attorney** and attorneys who represent former clients of **unavailable Attorney** may arrange to obtain the client files, if any, by contacting **Trustee Name**.

Unavailable Attorney's client files will be disposed of by court order if not picked up by **<date>**.

Ex. 6

ACKNOWLEDGEMENT OF RECEIPT OF FILE

I, **Client Name**, of **address**, hereby acknowledge that I have received my file materials from the office of **unavailable Attorney** in the matter of **<file # etc.>**.

I understand that **unavailable Attorney** has [died, was disbarred, is disabled or is missing]. I have been notified that I should retain substitute counsel immediately to handle any ongoing legal matters in which I am involved.

This the _____ day of _____, 2015.

Printed Name

Signature

Address

Telephone

FOR OFFICE USE:

Form of identification presented: _____

Date of identification: _____

Approved by: _____

Total

6) Despite their efforts, neither the trustee-conservator nor the State Bar has been able to determine the owners of the remaining \$_____ in the trust account of **Atty Name**.

7) Neither the trustee-conservator nor the State Bar has received notice of any claim from any former client of **Atty Name** or any other individual or entity.

8) As of the date of this motion, the trustee-conservator is informed and believes that no individual had qualified as the administrator of **Atty Last Name's** estate. The trustee-administrator will serve <>, **Atty Last Name's** closest known surviving relative, with a copy of this motion. § 6-31.

9) N.C.G.S. § 116B-31.5 provides that unidentified funds in an attorney's trust account may be escheated to the State of North Carolina.

WHEREFORE, the trustee-conservator hereby moves the Court to enter an order permitting the trustee-conservator to

1) disburse \$_____ of the funds in the trust account of **Atty Name** as set out in paragraph 6 herein and

2) escheat the remaining \$_____ to the Treasurer of the State of North Carolina pursuant to N.C.G.S. § 116B-31.5.

This the _____ day of _____, 2015.

Trustee Name
Trustee-Conservator of the
Law Practice of **Atty Name**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Disburse Funds was served upon persons known to have a potential interest in funds in the trust account of **Atty Name**, by depositing copies thereof into the U.S. Mail in a postage prepaid envelope addressed as follows:

<>
address

<>
address

This the ____ day of _____, 2015.

Trustee Name

Ex. 8

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE SENIOR RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT

COUNTY NAME COUNTY

IN RE: ATTY NAME,)	
ATTORNEY AT LAW)	
)	ORDER ALLOWING
DECEASED)	DISBURSEMENT
)	OF CLIENT FUNDS
)	

THIS MATTER came on to be heard and was heard on the ____ day of _____, 2000, by the undersigned Superior Court Judge pursuant to N.C.G.S. §84-28(j) on the motion of the N.C. State Bar for an order disbursing certain funds held in the bank accounts of Atty Name, a deceased attorney. Based upon the pleadings herein and the evidence introduced at the hearing, the Court makes the following:

FINDINGS OF FACT

- 1) Atty Name died on or about <date>, leaving no partners or associates capable of winding down his law practice.
- 2) On or about <date>, Hon. <judge> appointed Trustee Name as trustee-conservator of the law practice of Atty Name.
- 3) Following the appointment of Mr. Trustee Name as trustee-conservator of Atty Name's practice, the trustee-conservator took possession of records relating to the attorney trust account maintained by Atty Name at <bank>, account number <>.
- 4) With the assistance of the staff of the N.C. State Bar, the trustee-conservator has reviewed the trust account for the period <dates>, for the purpose of determining the ownership of the funds in the account.
- 5) As of <date>, the balance in Atty Name's attorney trust account at <bank> was \$ _____.
- 6) The State Bar's investigation reflects that the following sums are owed to former clients of Atty Name and others from the sums on deposit in the trust account:

Payee	Amount Due	For

Total

7) [Despite the efforts of the trustee-conservators and the State Bar, the Bar has been unable to determine the owners of the remaining \$_____ in the trust account of **Atty Name**.]

8) The costs of this action include \$65.00 in filing fees and \$_____ for advertisement of legal notice which funds were advanced by **Trustee Name** as trustee.

9) Neither of the trustee-conservators nor the State Bar has received notice of any claim from any former client of **Atty Name** or any other individual or entity.

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 NCGS §84-28(j).
2. The funds in **Atty Name's** trust account need to be disbursed to **Atty Name's** former clients as determined by the trustee-conservator's analysis of the trust account.
3. [N.C.G.S. § 116B-31.5 provides that unidentified funds in an attorney's trust account may be escheated to the State of North Carolina.]
4. The costs are properly assessed against the available funds pursuant to N.C.G.S. § 6-31.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER DISBURSING FUNDS

1) The conservator-trustees of the law practice of **Atty Name** are hereby authorized to disburse the following sums from the trust account of **Atty Name** at **<bank>**.

- a) \$_____ to the payees set out in paragraph 6 of the Findings of Fact herein;
- b) \$_____ to **Trustee Name**, trustee, for the costs.
- c) [\$_____ to the Treasurer of the State of North Carolina pursuant to N.C.G.S. § 116B-31.5.]

This the _____ day of _____, 2015.

Honorable <>
Superior Court Judge Presiding

Ex. 9

Name
Personal Representative/Executor
Estate of [Deceased Attorney]
Address

Re: Notice of Pending Claim Against Estate of **unavailable Attorney**

Dear Personal Representative/Executor:

As you may know, I have been appointed trustee of the law practice of **unavailable Attorney** for the purpose of winding down the practice 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 the estate of **unavailable Attorney** for my services as trustee-conservator following the wind down of the practice. Pursuant to N.C. Gen Stat. § 84-28 (j), compensation to a trustee-conservator of a deceased attorney's law practice is considered an administrative expense of the estate for purposes of determining priority of payment.

Please feel free to call if you have questions or wish to discuss this matter. Thank you very much.

Sincerely yours,

Trustee
Law Practice of **unavailable Attorney**

Ex. 10

STATE OF NORTH CAROLINA

COUNTY NAME COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT
File Number

IN RE: ATTY NAME,
ATTORNEY AT LAW

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PETITION FOR ORDER
DISCHARGING TRUSTEE OF
LAW PRACTICE OF ATTY NAME

NOW COMES, **Trustee Name**, trustee of the law practice of **Atty name** (“Trustee”), and petitions the Court for an order discharging him as trustee of the law practice of **Atty name**. In support of the petition, the Trustee respectfully shows:

1. On **<date>**, upon motion of the N.C. State Bar, the Court appointed **Trustee Name**, Esq., as trustee-conservator of the law practice of **Atty name** for the purpose of obtaining possession of files belonging to **Atty name’s** clients, securing funds held in **Atty name’s** trust and/or fiduciary accounts, obtaining **Atty name’s** trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of **Atty name**.
2. The undersigned Trustee has now taken all reasonable steps within **his** power to fulfill **his** obligations as trustee-conservator of the law practice of **Atty name**. **He** has returned or attempted to return all client files to their rightful owners. **He** has secured funds held in **Atty name’s** trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.
3. The undersigned Trustee has reviewed **Atty name’s** clients’ files. An inventory of the client files is attached as Exhibit A.
4. The undersigned Trustee has distributed files to a number of clients and/or former clients of **Atty name**. The Trustee has returned all active client files to the respective clients. A list of the files which have been returned to **Atty name’s** clients is attached hereto as Exhibit B.
5. A number of **Atty name’s** clients, have not picked up their files, despite receiving notice from the Trustee to do so. **[Description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients, for example:** The Trustee now has in **his** possession 5 or less closed client files wherein **he** 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. A final notice has been sent to clients who have not claimed their client files; a copy of such notice is attached as Exhibit D.

6. Some disposition needs to be made of the remaining files of **Atty name's** former clients. **[Any proposal for storage or disposition needs to be included here, for example:** The Trustee has indicated that **he** is willing to store the remaining closed files at **his** law offices located at **<address>**, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging him as trustee, at which time he would destroy any unclaimed files.] The trustee proposes depositing certain files with the Clerk of Superior Court due to their independent legal significance; such files are marked on Exhibit C.

7. The undersigned Trustee has disbursed all funds from any trust and/or fiduciary accounts held by **Atty name** to the appropriate persons. A copy of the order approving said disbursements is attached hereto as Exhibit __ and an accounting of said disbursements is attached thereto.

8. **[Is there any unclaimed money?]**

9. The undersigned Trustee has submitted a summary of his time and expenses incurred in serving as trustee of the law practice of **Atty name**. The summary of **his** time and expenses is attached hereto as Exhibit E. In carrying out his duties as trustee-conservator, the undersigned Trustee has provided services and incurred expenses in the total amount of \$_____.

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

1. Discharging **him** as trustee of the law practice of **Atty name**;
2. Allowing **him** to retain the unclaimed files of clients of **Atty name** for one year of the date of this order, after which time **he** should be authorized to destroy any files of clients of **Atty name** that remain unclaimed **[or any alternative proposal for disposition of files]**; and
3. Finding that **he** is entitled to reasonable compensation for his services as trustee of the law practice of **Atty name** and reimbursement of expenses incurred while serving as trustee of the law practice of **Atty name** in the amount of \$_____.

This the ___ day of _____, 2015.

Trustee Name, Trustee of the
Law Practice of Atty name

Attachment to Petition for Order Discharging Trustee

EXHIBIT A

List of Clients to Whom Letters Requesting Pick Up of File Were Sent

Name	Date
Client A	Jan. 1, 2015
Client B	Jan. 2, 2015

Attachment to Petition for Order Discharging Trustee

EXHIBIT B

List of Files Distributed to Clients of **unavailable Attorney**

Name	File Number	Date Delivered To Client
Client A	Smith v. Smith 93 CVS 1200	Jan. 1, 2015
Client B	In re Foreclosure (Unavailable Atty File No.)	Jan. 3, 2015

Attachment to Petition for Order Discharging Trustee

EXHIBIT C

List of Unclaimed Files of Clients;
Files to be deposited with the Clerk of Superior Court on <date> are marked below

Names

File No.

Attachment to Petition for Order Discharging Trustee

EXHIBIT D

Final Notice to Clients

TO CLIENTS OF **unavailable Attorney**

By letter dated _____, 2015, you were advised that **unavailable Attorney** has [died, became disabled, was disbarred or has disappeared] and that you should make arrangements to pick up your file and obtain a new attorney to represent you in any ongoing legal matters.

To date, neither you nor anyone on your behalf has made arrangements for picking up your file. As of the date of this letter, all active case files of **unavailable Attorney** will be transferred to the custody of the Clerk of <> County, <address>.

No action will be taken on your behalf with respect to any legal matters for which you sought legal advise from **unavailable Attorney**. To preserve any rights you may have, you should seek legal counsel immediately.

Sincerely yours,

Trustee

Attachment to Petition for Order Discharging Trustee

EXHIBIT E

Statement of Service Rendered by Trustee
of Law Practice of **Unavailable Attorney**

Service	Time/Hours
Review of files	
Letters to clients	
Discussions with clients	
Preparation of documents	
Court appearance	
Conferences with State Bar & Court	
TOTAL HOURS x \$_____ per hour	TOTAL
Extra Secretarial Help _____ Hours x. \$_____ per hour	
Long distance calls	
Fax costs	
Postage & Mailing	
Photocopying charges	TOTAL

Ex. 11

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE RESIDENT
SUPERIOR COURT JUDGE OF THE
JD# JUDICIAL DISTRICT
File Number

COUNTY NAME COUNTY

IN RE: ATTY NAME,
ATTORNEY AT LAW

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ORDER DISCHARGING
TRUSTEE

THIS MATTER coming on to be heard and being heard by the undersigned Chief Resident Superior Court Judge of the JD# Judicial District upon the motion of the trustee herein for an order discharging him as trustee of the law practice of Atty name, the Court makes the following:

FINDINGS OF FACT

1. On <date>, upon motion of the N.C. State Bar, the Court appointed Trustee Name, Esq., as trustee-conservator of the law practice of Atty name for the purpose of obtaining possession of files belonging to Atty name's clients, securing funds held in Atty name's trust and/or fiduciary accounts, obtaining Atty name's trust and/or fiduciary account records, and protecting the interests of the clients and/or former clients of Atty name.

2. Trustee Name, trustee of the law practice of Atty name, has now taken all reasonable steps within his power to fulfill his obligations as trustee-conservator of the law practice of Atty name. He has returned or attempted to return all client files to their rightful owners. He has secured funds held in Atty name's trust or fiduciary accounts and has identified or attempted to identify the persons to whom those funds belong.

3. Trustee Name has reviewed Atty name's clients' files. An inventory of the client files is attached as Exhibit A.

4. Trustee Name has distributed files to a number of clients and/or former clients of Atty name. Trustee Name has returned all active client files to the respective clients. A list of the files which have been returned to Atty name's clients is attached hereto as Exhibit B.

5. A number of Atty name's clients, have not picked up their files, despite receiving notice from the Trustee Name to do so. [Description of files remaining to be claimed or distributed to clients and description of steps taken to notify clients, for

example: Trustee Name now has in his possession 5 or less closed client files wherein he 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 Atty name's former clients. [Any proposal for storage needs to be included here, for example: Trustee Name has indicated that he is willing to store the remaining closed files at his law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging him as trustee, at which time he would destroy any unclaimed files.]

7. Trustee Name has disbursed all funds from any trust and/or fiduciary accounts held by Atty name to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.

8. [Is there any unclaimed money?]

9. Trustee Name has submitted a summary of his time and expenses incurred in serving as trustee of the law practice of Atty name. The summary of his time and expenses is attached hereto as Exhibit E. In carrying out his duties as trustee-conservator, Trustee Name has provided services and incurred expenses in the total amount of \$_____.

Based upon the foregoing FINDINGS OF FACT, the Court enters the following:

CONCLUSIONS OF LAW

1. Trustee Name, trustee of the law practice of Atty name, has taken all reasonable steps in his power to fulfill his obligations as trustee-conservator of the law practice of Atty name, to obtain the return of all client files, and to disburse all funds in Atty name's trust or fiduciary accounts.

2. Trustee Name is entitled to an order discharging him as trustee-conservator of the law practice of Atty name.

3. Trustee Name is entitled to reasonable compensation for his services rendered and reimbursement of expenses incurred while serving as trustee-conservator of Atty name's law practice in the amount of \$_____.

4. Trustee Name should be authorized to [add provision regarding disposal of any remaining client files, as proposed by trustee, for example: maintain in storage at his law office for a period of one year from the date of this order those few closed client files that have not yet been retrieved by the clients of Atty name, after which he should be

authorized to destroy any files of clients of **Atty name** that remain unclaimed, after making a reasonable attempt to remove from said files any original documents that may have independent legal significance, such as original wills and stock certificates and the like. **Trustee Name** shall retain any such original documents at **his** law office for a period of ___ years, at which time **he** should be authorized to destroy all unclaimed documents.]

WHEREFORE it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Trustee Name** is hereby discharged as trustee-conservator of the law practice of **Atty name**.
2. [Provision regarding disposal of files, as proposed above, for example: **Trustee Name** is hereby authorized to maintain in storage at **his** law office for a period of one year from the date of this order those few closed client files that have not yet been retrieved by the clients of **Atty name**, after which **he** is authorized to destroy any files of clients of **Atty name** that remain unclaimed, after making a reasonable attempt to remove from said files any original documents that may have independent legal significance, such as original wills and stock certificates and the like. **Trustee Name** shall retain any such original documents at **his** law office for a period of ___ years, at which time **he** is authorized to destroy all unclaimed documents.]
3. [In the event of disability/disbarment/abandonment: the attorney whose law practice the trustee wound down is ordered to pay compensation and expenses to trustee: **Atty name** is hereby ordered to pay \$ _____ to **Trustee Name** as reasonable compensation for **his** services as trustee for the law practice of **Atty name** and reimbursement for expenses incurred by **Trustee Name** while serving as trustee-conservator of **Atty name's** law practice. This order is deemed a judgment against **Atty name** for money owed, subject to enforcement under the applicable laws of North Carolina.¹ **Trustee Name's** claim against **Atty name** for payment of money owed is subject to assignment to the North Carolina State Bar to the extent that **Trustee Name's** claim is paid in whole or in part by the State Bar.]

[In the event of death, the deceased attorney's estate is ordered to pay compensation and expenses to trustee: _____ is entitled to reasonable compensation for his services as trustee for the law practice of _____ and reimbursement for expenses incurred by **him** while serving as trustee in the amount of \$ _____. Said compensation and expenses are to be paid by the Estate of _____, pursuant to N.C. Gen. Stat. § 84-28(j), as an administrative expenses of the Estate upon presentation of this Order.]

¹ Note: To the extent that the trustee or the State Bar may seek to enforce the order as a judgment against the respondent attorney, the trustee should attempt to serve a copy of the petition seeking discharge and notice of hearing on the respondent attorney, so that he or she will have notice and opportunity to be heard. See attached Form Notice of Hearing.

This the ____ day of _____, 2015.

Resident Superior Court Judge
JD# Judicial District