

Planning for the Unexpected Absence

A Resource from the
North Carolina State Bar



NORTH CAROLINA
STATE BAR

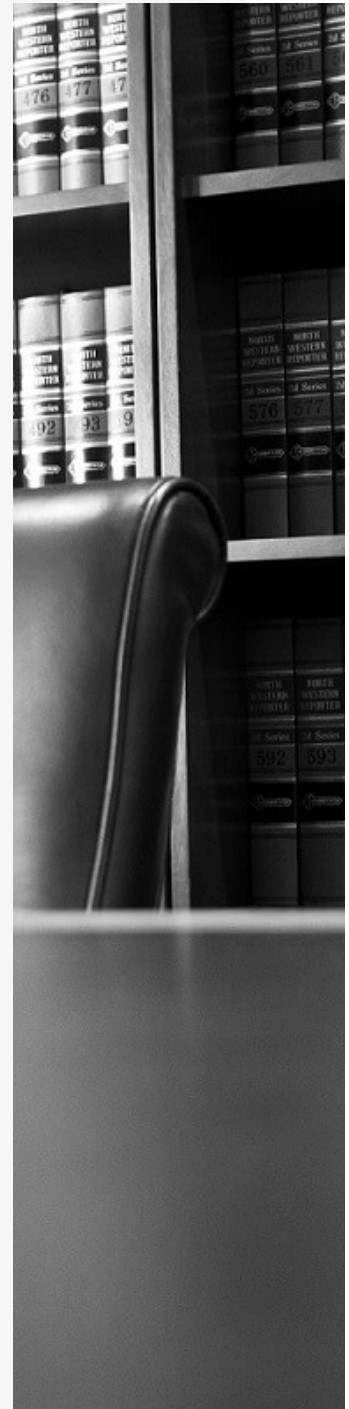
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Planning for the Unexpected: The Responsible Thing For ALL Lawyers To Do

What would happen if you could not come to the office tomorrow? If someone walked into your office due to your absence, would that person be able to figure out which clients needed attention, and what action was required to protect their interests?

Lawyers play an important role in the lives of their clients and their coworkers. As a result, a lawyer's unavailability -- temporary or permanent, planned or unexpected -- can have a significant impact on the provision of legal services, the stability of a law office, and the administration of justice itself. Accordingly, lawyers should consider creating and implementing a succession plan to ensure legal services are minimally disrupted in the event of a lawyer's unavailability.

Rule 1.3 of the Rules of Professional Conduct outlines a lawyer's duty of diligence in representing clients. Comment 5 to Rule 1.3 recognizes that, in carrying out the duty of diligence, lawyers need to implement a plan "[t]o prevent neglect of client matters in the event of a sole practitioner's death or disability[.]" While the comment to Rule 1.3 focuses on solo practitioners, all lawyers should pursue and implement a plan to ensure the continuity of legal services in the event of their unavailability.



FIRST STEPS

Planning for an unexpected absence can feel overwhelming, and the design and substance of such a plan may vary depending on a variety of circumstances, including the lawyer's practice area(s) and whether the lawyer has any partners or associates. But there are some simple first steps that every lawyer can (and should) take to start this important process. This guide serves as a launching point for every lawyer to contemplate, design, and implement an emergency plan for the protection of clients, coworkers, and ultimately the administration of justice.



No. 01 – Describe Your Practice

Think about your practice -- what types of cases do you handle? What types of cases have you handled in the past? Write down the areas of law that you have practiced during your career, especially if you still have client files from those prior days.



No. 02 – Who Are Your Clients?

Who are your active clients? What are the goals of the representation, and how far along are you in accomplishing those goals? After listing your active clients, summarize the goals and status of the representation, along with any next steps.



No. 03 – Talk With Someone

Your organization methods do not need to be secret. Take an afternoon and talk with your staff about what you produced in the first two steps listed above. Discuss how you keep things organized in your head and on your desk, and ask for input on how you can improve your organization for everyone's benefit.



No. 04 – Identify a Proposed Trustee

If you were unexpectedly unable to continue practicing, the State Bar may need to appoint a trustee to wind-down your practice. To this end, all lawyers should identify a "proposed trustee" -- someone who understands your practice, who knows where you kept critical practice-specific information (e.g., where is your list of active clients; where are your passwords; where is your trust account located), and who would be willing to help if such an emergency arose. Log-in to the State Bar's membership portal to find more information about this vital role, then ask a trusted colleague to serve in this capacity. After you have equipped your "proposed trustee" with the information needed to serve, log back in to the State Bar's membership portal and identify this person in your membership profile as your proposed trustee or fill out the form at the end of this resource and send it back to the State Bar. Although the State Bar -- or your proposed trustee -- may request a different lawyer be formally appointed to wind-down your practice, this trusted person will play a vital role in assisting all parties during the process.

Planning for an unexpected absence is but one aspect of a larger succession plan.

All lawyers should develop and implement a general succession plan to ensure the continuity of legal services to clients and to maximize their enjoyment of retirement when the time comes. Succession planning can be basic or incredibly detailed. Fortunately, lawyers have at their fingertips an abundance of helpful resources from North Carolina-based organizations as well as from other jurisdictions that can aid with all aspects of succession planning. Below you will find a sample of these available resources (all resources are hyperlinked). Lawyers may also want to consult with their malpractice carrier when creating a succession plan, as carriers may have specific requirements or resources for their insureds.

Print Resources:

[North Carolina Bar Association](#) - Retire, Reset, Reinvent: Planning for the Next Stage of Your Law Practice

[Lawyers Mutual of North Carolina](#) - Buying or Selling a Law Practice

[The Connecticut Bar Association](#), [Kentucky Bar Association](#), [State Bar of Michigan](#), [State Bar of New Mexico](#), and [the Oregon State Bar Professional Liability Fund](#) offer a variety of checklists and forms to assist in developing a succession plan

Direct Assistance:

[Lawyers Mutual Consulting Services](#) and [the Law Practice Exchange](#) offer individual assistance with the creation of a succession plan or the sale/transfer of a law practice

[The North Carolina Bar Association's Transitioning Lawyers Committee](#) offers support to lawyers exploring when and how a transition can (or must) be made

In need of advice about your professional responsibility? Contact the State Bar's Ethics Staff for free advice!

ethicsadvice@ncbar.gov
919-828-4620



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Designation of Proposed Trustee

In the event of an attorney's unexpected unavailability, the State Bar may need to seek the appointment of a trustee to assist in winding down an attorney's law practice or take other steps as needed to protect client interests. The trustee is not tasked with continuing or absorbing the unavailable attorney's practice, and the trustee does not replace the unavailable attorney as the client's new attorney. Rather, the trustee facilitates the return of client property and the potential transfer of client matters to new counsel, and generally works to wind down the unavailable attorney's law practice. When a trustee is needed, the State Bar seeks assistance from the local bar to identify potential candidates to serve as trustee and petitions the local senior resident superior court judge for the appointment of a trustee. This form allows an attorney to designate a "proposed trustee" who the State Bar and others may contact to potentially serve as trustee or otherwise assist in understanding the law practice of an unavailable attorney.

Attorney Name: _____ **Bar #:** _____

I hereby designate the attorney listed below as my proposed trustee to be contacted in the event of my unexpected unavailability. I understand that designating a proposed trustee does not guarantee their appointment as trustee of my law practice should a trustee be needed.

Name of Proposed Trustee: _____ **Bar #:** _____

I have communicated with my proposed trustee about serving in this capacity, and my proposed trustee has agreed to do so. Without sharing client confidences, I have provided my proposed trustee with information about the structure and organization of my law practice so that my proposed trustee can assist with the wind-down of my law practice should the need arise. Such information includes, but is not limited to:

The range of practice areas/case types encompassed by my practice, both past and present.

The general structure of my practice, including but not limited to:

- The location of my law office(s)
- Staff names and roles
- The location and organization of client files (both paper and electronic)
- The location of my trust account(s) and all records pertaining to entrusted funds received and disbursed by my law office(s)
- The location of or person(s) in possession of passwords needed to access any computer(s) or account(s) used in my law practice or containing client information

Signature of Attorney

**Complete this form in the
State Bar Membership Portal,
or email the form to:
bmclamb@ncbar.gov**