Resources for When an Attorney Becomes Unable to Continue the Practice of Law

Attorneys and their families may be faced with closing law offices due to the attorney's inability to continue practicing law due to illness, disability, suspension, disbarment, disappearance, or death. Resources attached include excerpts from Supreme Court Rules 8 and 9, ethics opinions, checklists and forms for bar associations, attorneys, family members and interested persons faced with closing a law practice. Rules of Professional Conduct must be followed when applicable.

Forms and Checklists

- Complaint for Appointment of Receiver Attorney[1]
- Order Granting Complaint for Appointment of Receiver Attorney[1]
- Things to do to prepare for Disaster, Disability and Death[2]
- Checklist for lawyers planning to protect clients' interests in the event of the lawyer's disability, impairment, incapacity or death[3]
- Checklist for closing your own office[3]
- Checklist for closing another attorney's office[3]
- Letter from closing or receiver attorney advising that lawyer is unable to continue in practice[3]

Rules

- Tenn. Sup. Ct. R. 8 RPC 1.15 (Safekeeping Property and Funds)
- Tenn. Sup. Ct. R. 8 RPC 1.16 (Declining or Terminating Representation)
- Tenn. Sup. Ct. R. 8 RPC 1.17 (Sale of Law Practice)
- Tenn. Sup. Ct. R. 9 § 29 (Appointment of a Receiver when an Attorney Becomes Unable to Continue the Practice of Law)

[1] This Complaint and Order were created with the assistance and cooperation of attorney Lucien Pera for the Memphis Bar Association.

[2] Excerpts from "Things to Do to Prepare for Disaster, Disability and Death," are reprinted with permission of the Harry Phillips American Inn of Court team members Anne Russell, Bill Harbison, John Kitch, Bill Farmer, Chris Coleman, Randy Kennedy, Michael Hoskins, Jerry Martin, Amy Farrar, Bill Penny, Rachel Odom and Nina Kumar.

[3] Excerpts from "Planning Ahead: Establish an Advance Exit Plan to Protect Your Client's Interests in the Event of Your Disability, Retirement or Death" are reprinted with permission of the New York State Bar Association.

CIRCUIT/CHANCERY/PROBATE COURT OF _____ COUNTY, TENNESSEE

IN RE	)	
_____,	)	No. _____
Respondent.	)	

COMPLAINT FOR APPOINTMENT OF RECEIVER ATTORNEY

Pursuant to Tenn. Sup. Ct. R. 9 § 29.3(a), _____ petitions for the appointment of one or more receiver attorneys to review and take custody of the files of _____, an attorney who has [resigned; been suspended; disbarred; disappeared; abandoned the practice; become disabled or transferred to disability inactive status] from the practice of law in Tennessee, and to take such action as seems necessary to protect the interests of attorney _____ and his/her clients as follows:

1. The Tennessee Supreme Court [suspended; disbarred, placed on disability inactive status; temporarily suspended] _____ from the practice of law in Tennessee on _____. (A copy of the Supreme Court's Order is attached as Exhibit A.)

2. Tenn. Sup. Ct. R. 9 § 29.2(b) provides as follows:

> If an affected attorney has: (1) resigned or been suspended or disbarred from the practice of law; (2) disappeared or abandoned the practice of law; (3) become disabled or incapacitated or otherwise become unable to continue the practice of law or has been transferred to disability inactive status pursuant to Section 27 of this Rule; or (4) died, the Board of Professional Responsibility, the Tennessee Bar Association or any local bar association, any attorney licensed to practice law in this state, or any other interested person may commence a proceeding in the chancery, circuit, or probate court for the county in which the affected attorney maintained an office for the practice of law for the appointment

of an attorney who is licensed to practice law in this state and in good standing with the Board of Professional Responsibility to serve as a receiver attorney to wind-down the law practice of the affected attorney.

3. Based upon the above facts and supported by the attached affidavit/declaration, _____ respectfully requests that this Court appoint one or more receiver attorneys currently licensed to practice law in Tennessee to take custody of client files, records, bank records and other property; review the files; notify all clients, Courts and counsel; deliver the files, money and other property belonging to the clients pursuant to the client's direction; take such steps as indicated if possible to protect the interests of the clients and public, and the affected attorney, to the extent possible, and to submit interim and final accountings to this Court as deemed appropriate.

4. _____ respectfully requests this Court authorize the receiver attorney to take custody of files, records and property of clients of the affected attorney and act as a signatory on any bank or investment accounts; safe deposit boxes or other depositories maintained by the affected attorney in connection with the affected attorney's practice, including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts, special accounts and to disburse funds to clients and others entitled thereto and take all appropriate actions with respect to such files, records, property and accounts.

Respectfully submitted,

_____

[Name]
[Address]
[Telephone Number]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon _____ on _____, 2014 by regular U.S. Mail at his/her last known office address of _____ and at his/her last known home address of _____.

_____

[Name]

CIRCUIT/CHANCERY/PROBATE COURT OF _____ COUNTY, TENNESSEE

IN RE	)	
_____,	)	No. _____
Respondent.	)	

ORDER GRANTING
COMPLAINT FOR APPOINTMENT OF RECEIVER ATTORNEY

Based upon _____'s Petition for Appointment of Receiver Attorney and accompanying affidavit or declaration and the entire record in this cause, it appears that the complaint should be granted.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

1. Pursuant to Tenn. Sup. Ct. R. 9 § 29.3(a), _____, a receiver attorney licensed to practice and practicing in Tennessee, is appointed and directed to:

a. take custody of the files, records, bank accounts, and other property of attorney _____ law practice;

b. review the files and other papers to identify any pending matters;

c. notify all clients represented by attorney _____ in pending matters of the appointment of the receiver attorney and suggest that it may be in their best interest to obtain replacement counsel;

d. notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of a receiver attorney for affected attorney _____;

e. deliver the files, money, and other property belonging to the clients of attorney _____ pursuant to the client's directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property if fees or disbursements for past services rendered are owed by the client;

f. take such steps as seem indicated to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the attorney's clients, to protect the interests of the affected attorney; and

2. Pursuant to Tenn. Sup. Ct. R. 9 § 29(b), _____, a receiver attorney licensed to practice and practicing in Tennessee, is authorized to:

a. take custody of and act as signatory on any bank or investment accounts, safe deposit boxes and other depositories maintained by the affected attorney in connection with the affected attorney's law practice, including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts and special accounts and to disburse funds to clients or others and take all appropriate actions with respect to such accounts.

3. To the extent possible, _____, the affected attorney, shall assist and cooperate fully with the receiver attorney in the transition, sale or winding down of the affected attorney's law practice.

4. Pursuant to Tenn. Sup. Ct. R. 9 § 29(e), _____, a receiver attorney shall prepare and submit to this Court interim and final accountings as deemed appropriate.

5. Pursuant to Tenn. Sup. Ct. R. 9 § 29.4, the appointment of the receiver attorney shall not be deemed to create an attorney/client relationship between the receiver attorney and any client of the affected attorney; however, the attorney-client privilege shall apply to all communications by or between the receiver attorney and the clients of the affected attorney.

6. This Court shall have jurisdiction over all the files, records and property of the affected attorney and may make any orders necessary or appropriate to protect the interests of the clients of the affected attorney and to the extent possible, the interests of the affected attorney.

7. The receiver attorney shall be entitled to reasonable fees as determined by this Court pursuant to Tenn. Sup. Ct. R. 9 § 29.6.

8. The receiver attorney shall be immune from suit for any conduct undertaken in good faith in the course of the official duties of the receiver attorney.

9. Pursuant to Tenn. Sup. Ct. R. 9 § 29.10, upon entry of this Order, any applicable statute of limitations, deadline, time limit or return date for filing as it relates to the clients of the affected attorney shall be tolled during the period from the date of the filing of the complaint for the appointment of a receiver attorney until the first regular business day that is not less than 60 days after the date of the entry of the Order appointing the receiver attorney, if it would otherwise expire before the extended date.

_____

_____, Chancellor/Judge

DATE: _____

THINGS TO DO TO PREPARE FOR DISASTER, DISABILITY AND DEATH

1. Last Will and Testament

2. Advance care directive/health care power of attorney

3. General durable power of attorney – immediate or springing

4. Personal – list of people and organizations to be notified in case of death, disability or disaster with their contact information
    a. Personal friends and family
    b. Fraternal organizations, boards on which you sit, etc.

5. Professional – list of people and organizations to be notified in case of death, disability or disaster with their contact information
    a. Clients
    b. Presiding judges
    c. Bar associations

6. List of all assets and documents including location and contact information
    a. Will, POA, Advance Care Directive
    b. Lockboxes or safe deposit boxes
    c. Insurance policies
    d. Securities, investments and all bank accounts
    e. Loan or notes owed to you or by you
    f. Special asset/collection information and locations

7. Back-up lawyer or lawyers – with knowledge of and ability in the relevant areas of the law and even some knowledge of the particular matter
    a. Clause in contract authorizing use of back-up lawyer if necessary, with consent to disclosure of confidential information
    b. Power of attorney for back-up lawyer to sign trust checks

8. Life insurance, health insurance, business interruption insurance, malpractice insurance, and disability insurance

9. Instructions to relevant parties on funeral arrangements

10. Person with knowledge on passwords for accessing the lawyer's computer, password-protected client information, bank accounts, etc.

THINGS TO DO TO PREPARE FOR DISASTER, DISABILITY AND DEATH (continued)

11. Instructions for spouse/personal representative
    a. Names of relevant professionals – lawyer to handle estate, CPA, HIPAA release, medical information
    b. Names of suggested lawyers for particular clients; matters
    c. Fees due/account receivables
    d. Debt information
    e. Location of all relevant documents

CHECKLIST FOR LAWYERS PLANNING TO PROTECT CLIENTS' INTERESTS IN THE EVENT OF THE LAWYER'S DISABILITY, IMPAIRMENT, INCAPACITY OR DEATH

1. Consider using retainer agreements with your clients that state that you have arranged for a Receiver Attorney[4] to manage or close your practice in the event of your death, disability, impairment or incapacity, and identifying such attorney.

2. Have a thorough and up-to-date office procedure manual that includes information on:

    a. How to check for conflicts of interest;
    b. How to use the calendaring system;
    c. How to generate a list of active client files, including client names, addresses, and phone numbers;
    d. Where client ledgers are kept;
    e. How the open/active files are organized;
    f. How the closed files are organized and assigned numbers;
    g. Where the closed files are kept and how to access them;
    h. The office policy on keeping original documents of clients;
    i. Where original client documents are kept;
    j. Where the safe deposit box is located and how to access it;
    k. The bank name, address, account signers, and account numbers for all law office bank accounts;
    l. The location of all law office bank account records (trust and general);
    m. Where to find, or who knows about, the computer passwords;
    n. How to access your voice mail (or answering machine) and the access code numbers; and
    o. Business and personal insurance policies with contact information for brokers and insurance companies.

3. Make sure all of your file deadlines (including follow-up deadlines) are on your calendaring system.

4. Document your files.

5. Keep your time and billing records up-to-date.

6. Have a written agreement and/or power of attorney with an attorney who will manage or close your practice (the "Receiver Attorney") that outlines the responsibilities delegated to the Receiver Attorney who will be managing or closing your practice. Include a procedure

[4] "Assisting Attorney" has been changed to "Receiver Attorney" consistent with Tenn. Sup. Ct. R. 9 § 29.

to enable your Receiver Attorney to determine whether your incapacity renders you unable to practice law, and complete in advance, a medical release and authorization form as required by HIPAA permitting disclosure of medical information to assist in this determination. Determine whether the Receiver Attorney also will be your personal attorney. Choose a Receiver Attorney who is sensitive to conflict of interest issues.

7. If your written agreement authorizes the Receiver Attorney to sign trust or general account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only upon the happening of a specific event. In some instances, you and the Receiver Attorney will be required to sign bank forms authorizing the Receiver Attorney to have access to your trust or general account. Choose your Receiver Attorney wisely for he or she may have access to your clients' funds.

8. Familiarize your Receiver Attorney with your office systems and keep him or her apprised of office changes.

9. Introduce your Receiver Attorney to your office staff. Make certain your staff knows where you keep the written agreement with your Receiver Attorney and how to contact the Receiver attorney if an emergency occurs before or after office hours. If you practice without a regular staff, make sure your Receiver Attorney knows whom to contact (the landlord, for example) to gain access to your office.

10. Inform your spouse or closest living relative and your named executor of the existence of this agreement and how to contact the Receiver Attorney.

11. Renew your written agreement with your Receiver Attorney each year. If you include the name of your Receiver Attorney in your retainer agreement, make sure the information concerning that attorney is current.

CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. Finalize as many active files as possible.

2. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their matters. The letter should explain how and where they can pick up copies of their files and should give a deadline for doing so.

3. For cases that have pending court dates, depositions or hearings, discuss with affected clients how to proceed. Where appropriate, request extensions, continuances and the rescheduling of hearing dates. Send written confirmations of these extensions, continuances and rescheduled dates to opposing counsel and to your client.

4. For cases before administrative bodies and courts, obtain clients' permission to submit motions and orders to withdraw as counsel of record.

5. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.

6. Select an appropriate date and check to see if all matters have a motion and order allowing your withdrawal as counsel of record or a Substitution of Attorney filed with the court.

7. Make copies of files for clients. Retain your files (except, in the case of original documents such as deeds, retain a copy and provide the client with the original). All clients should either pick up copies of their files (and sign a receipt acknowledging that they have received them) or sign an authorization for you to release copies of their files to their new attorneys.

8. Write to all clients for whom you have retained original wills, advising them that you are closing your office and request that they pick up their original will. Ask them to sign a receipt and maintain a record of all wills that are retrieved.

9. [If files are to be stored,] Tell all clients where their closed files will be stored and whom they should contact in order to retrieve them. [Preferably] Obtain all clients' permission to destroy their files.

10. If you have sold your practice, tell your clients the name, address and phone number of the purchasing attorney.

11. If you are a sole practitioner, arrange to have your calls forwarded to you or another person who can assist your clients. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

If you are handling the closing or sale of another attorney's practice, [which is governed by Tenn. Sup. Ct. R. 8, RPC 1.17,] the following checklist will be of assistance to you and your staff. The reason that the attorney is closing his or her practice will also affect how you make these decisions without the attorney's assistance. To the extent that the terminating attorney or his or her staff is available, you should make every effort to use that assistance.

Costs involved in taking over the responsibility for another attorney's practice can be substantial. Be prepared and be careful about who is responsible for these expenses.

The term "Affected Attorney" refers to the attorney whose office is being closed or sold. "Closing Attorney" refers to the Attorney who is handling the closing or sale of another attorney's practice. "Acquiring Attorney" refers to one who is purchasing another attorney's practice.

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, etc.

   If possible, discuss with the attorney the status of open files – what has been completed, what has not, what has been billed, etc.

   If a sale of the practice is being contemplated or pursued, whether by the Affected Attorney or the estate, review and understand [Tenn. Sup. Ct. R. 8 RPC 1.17 and Tenn. Sup. Ct. R. 9 § 29] which has critical notice and time requirements.

2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission to postpone or reschedule. (If making these arrangements constitutes a conflict of interest with your own clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)

   Consider consulting other lawyers if you do not have the expertise in one or more of the areas in which the Affected Attorney practiced.

   Consider the overhead costs involved in purchasing a practice or closing a practice.

3. Contact courts and opposing counsel about files that require immediate discovery or court appearances. Reschedule hearings or obtain extensions where necessary. Confirm extensions and rescheduling in writing.

4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.

5. Look for an office procedures manual. Determine if there is a way to get a list of clients with active files.

6. In cases where the client is obtaining a new attorney, be certain that a Substitution of Counsel is filed.

7. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Affected Attorney as attorney of record.

8. Send clients who have active files a letter explaining that the law office is closed.

    - Instructing them to retain a new attorney and/or to pick up the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately.

    If the Affected Attorney is available and willing, he or she should introduce you to non-lawyer staff members, and referral sources such as insurance agents, bankers, realtors, and accountants with whom the Affected Attorney worked. If the Affected Attorney is not available or willing to assist in this capacity, you should make these contacts immediately, not only for purposes of preserving client relations, but also to determine the location of clients, history of clients, etc. Many clients work with a team of advisors and, with the client's consent, you should have discussions with each of these other professionals. Clients may be looking to these other advisors for recommendations for new counsel.

9. Make sure that all court cases have a motion and order allowing withdrawal of the Affected Attorney or a Substitution of Attorney filed with the court.

10. Make copies of files for clients. Retain the Affected Attorney's file. All clients should either pick up a copy of their file (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and there are original documents in it that the client needs (such as a title abstract to property), return the original documents to the client and keep copies for the Affected Attorney's file. Determine who or what entity is responsible for storing the Affected Attorney's files and records. Return original wills to clients.

    Make contact with firms or practices with which the Affected Attorney was associated to determine what, if any, files remain with those practices. This will save the acquiring attorney a significant amount of time "searching" for files demanded by clients for past representation by the Affected Attorney. Also, determine who will bear the cost and the responsibility for acquiring or copying those files: Is it the closing attorney, the Affected

Attorney or the court or other agency that has taken over the primary responsibility for the Affected Attorney's practice?

Consider file storage: The older the practice, the more time and expense will be involved in file review and management.

Determine whether "closed" files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased, and that the file is closed. Others may never take this step and always assume that the client may be coming back for further representation.

When returning files, make sure that you are returning files to the proper "client." If a husband and wife have a will file from years ago, and the wife responds to your client inquiry letter by asking for the file, do you send back both wills? We advise not. What if there has been a divorce, or there is presently a dispute between the husband and wife? The same rule applies with corporations, shareholders, partners, etc. Obtain consent from all that are involved. Look for court or disciplinary committee guidance where appropriate.

Review the content of files before returning them to clients who have requested them; decide whether you need to retain a copy of all or some portion of the file, in relation to any potential liability you might face for having been responsible at some point for the file. Consider retaining documents for the benefit of the Affected Attorney so that her or his estate could defend any claims against them. Proceed with caution.

11. Advise all clients where their closed files will be stored, and who they should contact in order to retrieve a closed file. Again, carefully address the issue of file storage costs with all parties.

12. To locate clients for whom there is no current address, contact the postal service, referral sources of the Affected Attorney, and clients in the same geographic area. Consider publication to advertise that the firm has closed – be careful about any specific comments concerning Affected Attorney's actions that led closing of the office.

13. If the attorney whose practice is being closed was a sole practitioner, try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Affected Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

14. Make arrangements through the executor or through the Affected Attorney to obtain reporting endorsement coverage on professional liability insurance for continuing malpractice insurance.

15. Obtain written instructions from clients concerning any funds in their trust accounts. Contact other signatories on the IOLA account.

    Determine responsibility for attorney escrow accounts immediately. Your rights and obligations as the Acquiring Attorney must be known – potential liability is significant.

16. Prepare a final billing statement showing any outstanding fees due, and/or any money in trust. Remit money received from clients for services rendered by the Affected Attorney to the Affected Attorney or his/her estate. Remember, in many cases, the client has an entirely different understanding of what the billing arrangement is than the Affected Attorney. Be prepared for the time and expense of discussing and negotiating fee arrangements with clients. Immediately notify, and schedule a meeting with the Affected Attorney's accountant to obtain a full understanding of the financial reporting policy of the Affected Attorney. If the Affected Attorney did his or her own accounting and tax preparation, the Closing Attorney's accountant should be given immediate access to books and records to determine tax financial liabilities of the Affected Attorney.

17. If authorized, pay business expenses and liquidate or sell the practice. If the Affected Attorney is deceased, work with his/her executor in taking care of these matters.

18. Review and analyze technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Affected Attorney or his/her staff should participate in transferring over not only currently technology in use but also provide access to systems that have historically been used by the attorney but which are not current. A significant amount of client information exists in the old files and systems. Obtain passwords. Review "vendor" relationships with the Affected Attorney's vendors. Were prepayments made for services, products that are not going to be used? Are there outstanding bills for storage of files, stationery, supplies, etc. that must be paid, and if so, who is responsible?

19. Review Business insurance policies. When are renewal policies due? Which policies can be renewed and which can be cancelled, and by what date? Some policies may be cancelled mid-term and a pro-rata premium refund may be available, depending on the type of coverage. Also, if a Business Overhead Expenses (BOE) policy is in place, and if the Affected Attorney suffered a period of covered disability prior to the office closing, benefits may be available for some office expense.

LETTER FROM CLOSING OR RECEIVER[5] ATTORNEY ADVISING THAT LAWYER IS UNABLE TO CONTINUE IN PRACTICE

Re: [Name of Case]

Dear [Name]:

Due to _____ (reason for ill health), [*Affected Attorney*] is no longer able to continue in the practice of law. You will need, therefore, to retain the services of another attorney to represent you in your legal matter(s), and I recommend you do so immediately so that your legal interests may be protected. I will assist [*Affected Attorney*] in closing [his/her] practice.

You will need [a copy/copies] of your file(s). Accordingly, I enclose a written authorization for your file(s) to be released directly to your new attorney. You or your new attorney may forward this authorization to us and we will release your file(s) as instructed. If you prefer, you may come to [*address of office or location for file pick-up*] and pick [it/them] up so that you may deliver [it/them] to your new attorney. In either case it is imperative that you act promptly, and in no case later than [provide date] so that all of your legal rights may be preserved.

Your closed file(s) if any, will be stored at [*location*]. If you need a closed file, you may contact me at the following address and phone number until [date]:

_____

[Name] [Address] [Phone]
After that time, you may contact [*Attorney in charge of closed files*] for your closed file(s) at the following address and phone number:

_____

[Name] [Address] [Phone]

You will shortly receive a final accounting from [*Affected Attorney*], which will include any outstanding balance(s) you owe [him/her], and an accounting of any funds in your client trust account.

On behalf of [*Affected Attorney*], I would like to thank you for affording [*him/her*] the opportunity to provide you with legal services. If you have any additional concerns or questions, please feel free to contact me.

Sincerely,

[Receiver Attorney] [Firm]

[5] "Assisting Attorney" has been changed to "Receiver Attorney" consistent with Tenn. Sup. Ct. R. 9 § 29.

TENNESSEE SUPREME COURT RULE 8
RULES OF PROFESSIONAL CONDUCT

RPC 1.15: SAFEKEEPING PROPERTY AND FUNDS

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 29.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest on Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of property or funds in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.

(f) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Tennessee Lawyers' Fund for Client Protection (TLFCP). No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (f).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted and reasonable internal control procedures and comply with any recordkeeping rules established by law or court order. See, e.g., Tenn. Sup. Ct. R. 9.

[2] Paragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account. All such accounts, including IOLTA accounts, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 29.1.

[3] Under Supreme Court Rule 43, Tennessee lawyers are required to report their compliance with their obligations concerning their IOLTA accounts and the handling of client funds and to comply

with the technical requirements for establishing and operating such accounts. This RPC requires Tennessee lawyers to establish IOLTA accounts only at eligible financial institutions. Tennessee lawyers may rely upon the list of eligible financial institutions maintained pursuant to Rule 43 in establishing an IOLTA account to comply with subparagraph (b)(2).

[4] A lawyer is also responsible for assuring the payment of any financial institution service charges or fees on such trust accounts. Subparagraph (b)(1) of this Rule makes clear that any interest earned on non-IOLTA trust accounts belongs to the client or third party whose funds generate the interest, and that the interest earned on them may be used by a lawyer to pay bank charges or fees. A detailed accounting of such interest and fees may be necessary to avoid the payment of any client- or matter-specific financial institution service charges or fees (for example, charges for a certified check obtained solely for the benefit of one client) by a client other than the one on whose behalf the charge or fee was incurred.

[5] In determining whether client or third-person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer should take into consideration a number of factors, including the amount of funds to be deposited; the expected duration of the deposit; the rate of interest or yield available from the financial institution where the funds are to be deposited; the service charges, fees, and other costs that are reasonably expected to be associated with the deposit of funds; the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that are reasonably likely to affect the ability of the client or third person to earn income, in excess of any service charges, fees, or other costs incurred to secure such income from the funds.

[6] Subparagraph (b)(3) expressly recognizes that a lawyer's decision concerning whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) is a discretionary one, and provides that a lawyer who makes such a determination in good faith shall not be subject to any disciplinary sanction for this decision. A lawyer or law firm should review the account at reasonable intervals to determine if the amount of the funds or expected duration changes the type of account in which funds should be deposited.

[7] In no event may overdraft charges imposed upon a trust account be paid from interest on a trust account.

[8] In order to allow a lawyer to pay appropriate financial institution service charges or fees on a trust account, paragraph (b) of the Rule expressly relaxes the prohibition on commingling lawyer and client funds in a trust account to permit a lawyer to deposit the lawyer's own funds in the trust account for the sole purpose of paying financial institution service charges or fees, but only in an

amount reasonably necessary for that very limited purpose. Lawyers should exercise great care in using this limited permission to deposit funds in a trust account, given the cardinal importance of the principle otherwise banning commingling of funds.

[9] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's position. The disputed portion of the funds must be kept in trust, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[10] Whether a fee that is prepaid by a client should be placed in the client trust account depends on when the fee is earned by the lawyer. An advance payment of funds upon which the lawyer may draw for payment of the lawyer's fee when it is earned or for reimbursement of the lawyer for expenses when they are incurred must be placed in the client trust account. When the lawyer earns the fee, the funds shall be promptly withdrawn from the client trust account, and timely notice of the withdrawal of funds should be provided to the client. RPC 1.16(d) requires the refund to the client of any part of a fee that is not earned by the lawyer at the time that the representation is terminated. See RPC 1.5, Comment [4] for a discussion of two situations in which an advance payment from a client is properly treated as an earned fee and therefore cannot be placed in the lawyer's client trust account.

[11] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client and accordingly may refuse to surrender the funds or other property to the client. However, a lawyer should not unilaterally assume to resolve a dispute between the client and the third party.

[12] When two or more persons (one of whom may be the lawyer) have substantial grounds for dispute as to the person entitled to the funds or other property held by the lawyer, the lawyer, with due regard to his or her confidentiality obligations under RPC 1.6, may file an action to have a court resolve the dispute, including an interpleader action.

[13] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[14] In certain circumstances, Tennessee law governing abandoned property may apply to monies in lawyer trust accounts or other property left in the hands of lawyers and may govern its

disposition. See Tenn. Code Ann. §§ 66-29-101 to 66-29-204 (Uniform Disposition of Unclaimed Property Act).

[15] Paragraph (a) of this Rule requires a lawyer to hold property and funds of clients or third persons separate from the lawyer's own property and funds. In addition, paragraph (b) provides that a lawyer may deposit the lawyer's own funds in a separate trust account "for the sole purpose of paying financial institution service charges and fees. . ., but only in an amount reasonably necessary for that purpose." Taken together, those provisions require a lawyer to promptly withdraw from the lawyer's trust account any legal fees earned by the lawyer. Additionally, the lawyer may not pay his or her own personal or professional expenses directly from the trust account, even if the trust account temporarily contains legal fees earned by the lawyer; instead, the lawyer must withdraw earned legal fees from the trust account and deposit those funds into the lawyer's own account, from which the lawyer will pay his or her expenses. See, e.g., Bd. of Prof'l Responsibility v. Allison, 284 S.W.3d 316, 324-25 (Tenn. 2009).

DEFINITIONAL CROSS-REFERENCES

"Reasonably" See RPC 1.0(h)

TENNESSEE SUPREME COURT RULE 8
RULES OF PROFESSIONAL CONDUCT

RPC 1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or imprudent;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists; or

(8) the client gives informed consent confirmed in writing to the withdrawal of the lawyer.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse effect on the client with respect to the subject matter of the representation; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See RPCs 1.2(c) and 6.5; see also RPC 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also RPC 6.2; Tenn. Sup. Ct. R. 14. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. See, e.g., Tenn. Crim. Ct. App. R. 12. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under RPCs 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable for the lawyer to prepare a written statement reciting the circumstances. In the special case of in-house counsel, the organizational employer may also be liable for damages for retaliatory discharge in violation of public policy, but because of the client's right to discharge the lawyer, reinstatement would not be an available remedy under such circumstances.

[5] Whether a client can discharge appointed counsel may depend on other law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in RPC 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw for any reason if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on taking action that the lawyer considers repugnant or imprudent. The lawyer may also withdraw without the need to provide any justification and even if withdrawal would result in a material adverse effect on the client's interests if the client provides informed consent, confirmed in writing, to the lawyer's withdrawal.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation. The lawyer must, however, give the client reasonable notice of the lawyer's intention to withdraw.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. After discharge or withdrawal from representation of the client, the lawyer may retain work product prepared by the lawyer for the client, but for which the lawyer has not been compensated, as security for a fee only if doing so will not have a materially adverse effect on the client with respect to the subject matter of the representation and to the extent permitted by law. The lawyer may, at the lawyer's own expense, make a copy of client file materials for retention by the lawyer prior to surrender.

[10] Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

DEFINITIONAL CROSS-REFERENCES

"Confirmed in writing" See RPC 1.0(b)
"Fraud" and "fraudulent" See RPC 1.0(d)
"Informed consent" See RPC 1.0(e)
"Material" and "materially" See RPC 1.0(o)
"Reasonable" See RPC 1.0(h)
"Reasonably believes" See RPC 1.0(i)
"Substantial" and "substantially" See RPC 1.0(l)
"Tribunal" See RPC 1.0(m)
"Writing" See RPC 1.0(n)

TENNESSEE SUPREME COURT RULE 8
RULES OF PROFESSIONAL CONDUCT

RPC 1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or a subject-area of law practice, including goodwill, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the subject-area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire subject-area of practice, is sold to one or more lawyers or law firms, and the seller provides the buyer with written notice of the fee agreement with each of the seller's clients and any other agreements relating to each client's representation; and

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale, including the expected effective date of the proposed sale, the identity and office address of the purchaser, a brief description of the size and nature of the purchaser's practice and its capacity to assume the representation of the client in accordance with the Rules of Professional Conduct;

(2) the client's right to retain other counsel or to take possession of the file and any other property or funds in the possession of the selling lawyer to which the client is entitled;

(3) the duties of the purchasing lawyer under paragraph (d) and (e) of this Rule, and

(4) the fact that the client's informed consent to representation by the purchaser and the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction or by the presiding judge in the judicial district in which the seller resides. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged each client shall not be increased by reason of the sale; and

(e) The purchasing lawyer shall abide by any other agreements between the selling lawyer and the client with respect to the representation as are permitted by these Rules.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in a subject-area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See RPCs 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of a subject-area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the subject-area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to assume judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon vacating the judicial office.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to an organization.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Tennessee is sufficiently large that a move from one locale therein to another may justify allowing the lawyer to sell his or her practice. Thus, the Rule permits the sale of the practice when the lawyer leaves the geographic area in which he or she is practicing.

[5] This Rule also permits a lawyer or law firm to sell a subject-area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by RPC 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Subject-Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire subject-area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of RPC 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the information specified in paragraphs (c)(1)-(3), and must also be informed in writing that the decision to consent or make other arrangements must be made within thirty (30) days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see RPC 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see RPC 1.7 regarding conflicts and RPC 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see RPCs 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. See RPC 1.16.

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice. This Rule also does not apply to mergers between firms.

DEFINITIONAL CROSS-REFERENCES

"Law Firm" See RPC 1.0(c)
"Informed consent" See RPC 1.0(e)
"Written" See RPC 1.0(n)

Tennessee Supreme Court Rule 9
Section 29. Appointment of a Receiver when an Attorney Becomes Unable to Continue the Practice of Law

29.1. The purpose of this Section is to protect clients and, to the extent possible and not inconsistent with the protection of clients, to protect the interests of the attorney to whom this rule applies.

29.2. Appointment of a Receiver Attorney.

(a) For purposes of this Section, an "affected attorney" is an attorney who is licensed and engaged in the practice of law in this State and who has no partner, associate, executor, or other appropriate successor or representative capable and available to continue or wind-down the attorney's law practice.

(b) If an affected attorney has: (1) resigned or been suspended or disbarred from the practice of law; (2) disappeared or abandoned the practice of law; (3) become disabled or incapacitated or otherwise become unable to continue the practice of law or has been transferred to disability inactive status pursuant to Section 27 of this Rule; or (4) died, the Board of Professional Responsibility, the Tennessee Bar Association or any local bar association, any attorney licensed to practice law in this state, or any other interested person may commence a proceeding in the chancery, circuit, or probate court for the county in which the affected attorney maintained an office for the practice of law for the appointment of an attorney who is licensed to practice law in this state and in good standing with the Board of Professional Responsibility to serve as a receiver attorney to wind-down the law practice of the affected attorney.

(c) The proceeding shall be commenced by the filing of a complaint setting forth the pertinent facts, which shall be verified or accompanied by the affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts. To the extent practicable, the complaint and any accompanying affidavit or declaration under penalty of perjury shall be served upon the affected attorney or the guardian, conservator, or personal representative of the affected attorney if one has been appointed and qualified.

(d) If the trial court determines upon a showing by a preponderance of the evidence that the appointment of a receiver attorney is necessary to protect the interests of the affected attorney's clients or the interests of the affected attorney, the trial court shall appoint one or more receiver attorneys. The order of the trial court may be appealed to the Court by the affected attorney or by the guardian or personal representative of the affected attorney, or by the complainant.

29.3. Duties and Authority of a Receiver Attorney.

(a) The receiver attorney shall: (1) take custody of the files, records, bank accounts, and other property of the affected attorney's law practice; (2) review the files and other papers to identify any pending matters; (3) notify all clients represented by the affected attorney in pending matters of the appointment of the receiver attorney and suggest that it may be in their best interest to obtain replacement counsel; (4) notify all courts and counsel involved in any pending matters,

to the extent they can be reasonably identified, of the appointment of a receiver attorney for the affected attorney; (5) deliver the files, money, and other property belonging to the clients of the affected attorney pursuant to the client's directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property if fees or disbursements for past services rendered are owed to the affected attorney by the client; and (6) take such steps as seem indicated to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the affected attorney's clients, to protect the interests of the affected attorney. If the receiver attorney determines that conflicts of interest exist between the receiver attorney and a client of the affected attorney, the receiver attorney shall notify the court of the existence of the conflict of interest with regard to the particular matters and the receiver attorney shall take no action with regard to those cases or files.

(b) The order appointing the receiver attorney shall specifically authorize the receiver attorney to take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the affected attorney in connection with the affected attorney's law practice, including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts, and special accounts, and to disburse funds to clients of the affected attorney or others entitled thereto, and take all appropriate actions with respect to such accounts.

(c) The receiver attorney shall take reasonable efforts to safeguard all property in the offices of the affected attorney and to collect any outstanding attorney's fees, costs, and expenses to which the affected attorney is entitled and shall make appropriate arrangements for the prompt resolution of any disputes concerning outstanding attorney's fees, costs, and expenses.

(d) To the extent possible, the receiver attorney shall assist and cooperate with the affected attorney and the guardian or personal representative of the affected attorney in the transition, sale, or winding-down of the affected attorney's law practice. The receiver attorney may purchase the law practice of the affected attorney only upon the trial court's approval of such sale.

(e) The trial court may order the receiver attorney to submit interim and final accountings, as it deems appropriate. The trial court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the affected attorney to be filed under seal.

29.4. Protection of Client Information and Privilege. The appointment of the receiver attorney shall not be deemed in any manner to create the relationship of attorney and client between the receiver attorney and any client of the affected attorney. However, the attorney-client privilege shall apply to all communications by or between the receiver attorney and the clients of the affected attorney to the same extent as it would have applied to any communications by or to the affected attorney, and the receiver attorney shall be governed by Rule 1.6 of the Tennessee Rules of Professional Conduct with respect to all information contained in the files of the affected attorney's clients and any information relating to the matters in which the clients were being represented by the affected attorney.

29.5. Protection of Client Files and Property. The trial court shall have jurisdiction over all of the files, records, and property of clients of the affected attorney and may make any orders

necessary or appropriate to protect the interests of the clients of the affected attorney and, to the extent possible and not inconsistent with the protection of clients, the interests of the affected attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the affected attorney.

29.6. Fees and Expenses of the Receiver Attorney.

(a) The receiver attorney shall be entitled to reasonable fees in compensation for performance of the receiver attorney's duties and reimbursement for actual and reasonable costs incurred by the receiver attorney in connection with the performance of the receiver attorney's duties. Reimbursable expenses shall include, but not be limited to, the actual and reasonable costs incurred in connection with maintaining the staff, offices, and operation of the affected attorney's law practice and the employment of attorneys, accountants, and others retained by the receiver attorney in connection with carrying out the receiver attorney's duties.

(b) The receiver attorney shall file an application for fees and expenses with the trial court, which shall determine the amount of such fees and reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the trial court of all funds and property coming into the custody of the receiver attorney.

(c) Any fees and expenses awarded by the trial court to the receiver attorney shall be paid by the affected attorney or the estate of the affected attorney or from such other available sources as the court may direct. The order of the trial court awarding the fees and expenses shall be a judgment against the affected attorney or the estate of the affected attorney. The judgment shall be a lien upon all property of the affected attorney or the estate of the affected attorney retroactive to the date of filing of the complaint for the appointment of a receiver attorney under this Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

29.7. Limitation of Liability. Any person serving as a receiver attorney under this Rule shall be immune from suit for any conduct undertaken in good faith in the course of the official duties of the receiver attorney.

29.8. Employment of the Receiver as Attorney for a Client. A receiver attorney shall not, without the informed written consent of the client and the permission of the trial court, represent a client in a pending matter in which the client was represented by the affected attorney, other than to temporarily protect the interests of the client, or unless and until the receiver attorney has concluded the purchase of the law practice of the affected attorney. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver attorney.

29.9. Advance Designation of a Receiver or Successor Attorney. An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or

assist in the continued operation, sale, or closing of the attorney's law practice in the event of such attorney's death, incapacity or unavailability. In the event an attorney to whom this rule applies has made adequate provision for the protection of his or her clients, such provision shall govern to the extent consistent with this Rule unless the trial court or the Court determines, upon a showing of good cause, that the provisions for the appointment of a receiver attorney under this Rule should be invoked. After a complaint for the appointment of a receiver attorney has been filed, the affected attorney or the guardian, conservator, or personal representative of the affected attorney may designate a successor attorney and the trial court shall respect such designation unless the trial court determines, upon a showing of good cause, that such designation should be set aside.

29.10. Effect on Pending Cases. Upon entry of the order appointing a receiver attorney, any applicable statute of limitations, deadline, time limit, or return date for a filing as it relates to the clients of the affected attorney shall be tolled during the period from the date of the filing of the complaint for the appointment of a receiver attorney until the first regular business day that is not less than sixty (60) days after the date of the entry of the order appointing the receiver attorney, if it would otherwise expire before the extended date.