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Death of a Practice

*Estate Planning With the
Professional Will*

As citizens in a culture that worships youth, most of us find it nearly impossible to admit our own mortality. Even fewer of us make plans for that eventuality.

The same is true of attorneys. We spend much of our time advocating for our clients. Often, we are so consumed with our work and our daily activities that we frequently fail to plan for vacations, much less develop an estate plan, one that prepares for incapacity and death. That is a crucial mistake. Fortunately, it is a reversible error.

What's The Harm?

For the survivors of a deceased person, the hours and days following a loved one's death is no time for important decisions. This phenomenon is not unique to attorneys. In fact, the majority of American adults have no plan in place that protects them, or their businesses, in the event of either incapacity or death, and it is often the family that is left to sort out the details.¹

Denial offers us and our clients no protection from the inevitable. It is critically important that attorneys include special provisions for their law practice in an estate plan. We have far more to gain than to lose by sitting down in advance to plan for every contingency life may throw at us. Moreover, our special relationship with our clients requires us to be much more aware of the consequences to them if their attorney should become incapacitated or pass away.

In any law practice the incapacity or death of an attorney is problematic, but this is a particularly precarious situation for the personal representative or power of attorney agent for an attorney. The individual is not only required to settle the normal affairs of the estate, but must also resolve any outstanding issues for the attorney's practice. The interests of the clients must always be protected, and a lawyer's incapacity or death does not relieve the attorney of responsibility in this area.

The Attorney's Duties

Just what, then, is expected of an attorney?

The State Bar Ethics Committee has clearly recognized the need for a contingency plan to address problems encountered by a disabled or deceased attorney.² The State Bar currently regulates 19,528 attorneys.³ Of those, 459 either went on inactive status or passed away in 2006.⁴ This number stands to increase in coming years, and the need for a contingency plan will become even more apparent.

The committee asserts that a prudent attorney should establish a contingency plan or "professional will" to ensure that the clients and client trust accounts are safeguarded. Such a will is an estate plan for an attorney that includes provisions for incapacity or death, including how clients' interests will be protected and how the law practice will be maintained or dissolved. The development of some type of contingency plan is consistent with ER 1.1 and ER 1.3, which require an attorney to be both competent and diligent in representing clients.⁵

If a plan has not been established in the case of incapacity or death, the State Bar of Arizona is available as a resource to attorneys. In certain cases, the State Bar may be named as a conservator under Rules 66 through 69 of the Arizona Rules of the Supreme Court.

Under these provisions, however, this role is limited to notifying clients, returning files and taking possession of the client trust accounts.⁶ There is no requirement for them to direct clients to another attorney in the case of ongoing representation. This could gravely affect the incapacitated or deceased practitioner's clients, especially in such important client matters as court dates, statutes of limitations or document filings.

To prevent neglect of client matters, the attorney's duty of diligence may require that each attorney prepare a plan that designates another competent lawyer to review the files, notify the clients and determine if there is a need for immediate protective action.⁷ Moreover, ER 1.15 requires attorneys to safeguard property and promptly deliver client funds. In that regard, the client trust accounts present an enormous area of concern. In fact, this rule holds each practicing attorney accountable for the client trust accounts, and there have been numerous ethics violations due to mishandling of these accounts.⁸

In the larger firms, there are other attorneys who can represent the client, if the client so chooses, and many of these problems are easily addressed. In the small firm or solo practitioner setting, the resolution of the problem of incapacity or death requires a more detailed professional will. When an attorney devises a professional will, a Pandora's box of ethical issues is opened, including problems with confidentiality, protection of the client trust account and possible conflicts of interest.⁹ This article is designed to address those issues, to highlight the potential liability for any attorney who fails to develop a proper estate plan, and to make recommendations as to what a professional will should contain.

Sanctions for Failing To Plan

To a client, an attorney is someone who does far more than simply "practice law." She is a counselor or trusted advisor to the client. Certainly, the attorney plays a critical role in the client's life during ongoing representation. Imagine the devastation a client would feel in the event of that attorney's incapacity or death. Given that relationship,

lawyers owe an affirmative duty to protect their clients' interests.¹⁰

What should that plan include?

The State Bar and the American Bar Association suggest that, at minimum, such a plan should, include the designation of another attorney ("Assisting Attorney") to notify clients, review client files, and protect client funds.¹¹ Other state bar associations have taken a similar view.¹²

According to ER 1.1, competence includes "preparation reasonably necessary for the representation," which, when read in conjunction with ER 1.3, would indicate that each attorney should diligently prepare for each client's representation. Although representation would necessarily be terminated in the event of the attorney's incapacity or death, the lawyer's fiduciary obligations of loyalty and confidentiality continue beyond the termination of the agency relationship.¹³ An attorney would then have a duty to ensure that his or her clients are informed in the event of the law practice's dissolution.¹⁴ An incapacitated or deceased attorney is understandably powerless to inform clients of the change in circumstance.

Liability

Failure to prepare a future plan to protect client files and property in the event of the lawyer's incapacity or death could bring about those dreaded words that no attorney wants to hear—sanctions and malpractice.

Some jurisdictions have found lawyers to have violated the duty to act competently when the attorneys have neglected client matters by reason of ill health, retirement or personal problems.¹⁵ The same problems are presented by the attorney's incapacity or death. Thus, an attorney without a contingency plan for clients' files might be guilty of neglect.

Such a result is consistent with two of the three justifications for lawyer discipline¹⁶:

- Sanctioning lawyers who inadequately prepare to protect their clients' interests in the event of incapacity or death would dissuade other attorneys from committing similar offenses and help to restore public confidence in the bar.
- Although there is no specifically applicable requirement under the Rules of Professional Responsibility, it is fairly inferred from the aforementioned rules that attorneys should be proactive in making arrangements or their clients' files in the event of incapacity or death.

The only Ethics Opinion issued on this matter in Arizona supports this assertion.¹⁷

- Moreover, malpractice insurance carriers often require that attorneys have contingencies in place. For some time, those carriers have required that solo practitioners have some other attorney be available in cases of disability or vacation.

Thus, implementing a plan is both good business and ethically advisable.

Practice Types

The specific content of the plan is a matter for each practitioner to determine based on his or her practice. However, to determine what type of estate plan or professional will is required, you must look to the nature of the law practice.

Historically, selection of a business structure for a law firm was limited to the professional corporation or association or the general partnership. The business organization chosen and the rules governing professional practices determined the relationship of those practicing within the firm.

Recent times have brought the development of new business organizations, such as the limited liability company (LLC) and the limited liability partnership (LLP). Because the law, like any business, tends to change, the manner of making decisions with respect to changed circumstances should be spelled out.

Firm Size

There are differences in how the plan is executed, depending on the size and nature of the law practice. Though all lawyers need to be concerned with notifying the client in the event that an attorney becomes incapacitated or deceased, the disposition of client files and seeking new representation differs from large, corporate firms to the solo practitioner.

Large Firm Concerns

The large corporate practices typically have multiple owners (partners) who are assisted by associate attorneys. It is essential that the large firm have some sort of internal structure designed to protect both the clients

and the other attorneys in the event of an attorney's incapacity or death. This internal arrangement should be manifested in the form of a shareholder's agreement in the case of an owner (partner) or, in the case of an associate attorney, in the form of a contract for employment.

Two fundamental aspects are addressed in these agreements. An agreement will provide a well-defined set of rules governing the relationship of the business owners—in this case the partners of the law firm—and effectively manage the inevitable transfer of interests in the business to the new owners, or to existing owners, from a departing owner. Transfers under certain operating agreements may have specific issues to consider (*see* "Look to the Agreement" on p. 42).

The interests of the clients of these large firms are generally protected because the files can be absorbed by the remaining

the attorney's interest. Business partners generally do not want to be in business with anyone outside the business; in fact, when that business is a law practice, no one other than an attorney may be partner to it.¹⁹ If an attorney becomes disabled or dies, and the family becomes the owner of the law practice, several steps must be taken to maintain or dissolve the law practice. In these cases, the law practice must be sold to licensed individuals, and a plan for that sale should be made prior to the incapacity or death of the practicing attorney.²⁰

Small-Firm and Solo Concerns

The issues and concerns of attorneys practicing in smaller partnerships are similar to those of larger law firms. Attorneys involved in this type of law practice would still require some sort of partnership agreement that speaks to the incapacity or death of one

of the partners. Again, there would be the need to have the proper infrastructure in place so that documentation in each client's file is extensive. Any of the other partners should be able to readily access a list of the incapacitated or deceased attorney's

clients, so that they could each be notified. The documentation also ensures that the client's representation is not diminished in any way.

At this size of practice, however, there is a greater chance for error than in the larger practice, because it is more likely that the incapacitated or deceased attorney was not working with other attorneys in the firm on any given file. Moreover, there simply are not as many attorneys on hand to easily facilitate the handling of the files.

Perhaps the most problematic situation is that of the solo practitioner, where the potential harm to the client is the greatest. In the absence of a law partner, it is assumed that the agent or personal representative would step into the role of the incapacitated or deceased attorney. If the personal representative is not an attorney, then he or she cannot practice law but is still responsible for winding up the affairs of the law practice. This includes notifying clients and arranging for the disposition of files. This is a huge burden to bear, especially in light of

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attorneys in the firm. However, this does not mean that attorneys practicing in large firms are relieved of all duty to plan for incapacity or death. If an attorney is no longer able to continue representation, the ethical rules require that the client be given written notice.¹⁸ Moreover, a law firm, regardless of size, should have some sort of office procedure that calls for extensive documentation of every client's file. Any other attorney in the firm, or even an attorney outside the law firm, should be able to understand quickly a client's file and be able to assist in any ongoing matter. If an attorney makes mental notes but fails to document a client's file in writing properly, then the incapacity or death of that attorney could cause irreparable harm to the client.

The contingency plan should also contemplate the deceased or incapacitated attorney's ownership interests in the law practice. A larger law firm may have a disability or life insurance policy on a partner in the firm so that the spouse or other heir of the partner would receive compensation of

the fact that most people, lawyers included, name friends or family members as the power of attorney agents or personal representatives of the estate.

Conservators

Some states, including Arizona, allow a special commissioner to be appointed to protect clients' interests in limited circumstances.²¹ If an attorney becomes incapacitated and has no contingency plan in place to protect clients' interests, a conservator must be named. In limited circumstances, the State Bar of Arizona can petition for this conservatorship and be named to act. However, as previously mentioned, given the costs of a conservatorship under Rule 66, the State Bar is reluctant to assume the burdens and expenses associated with appointing a special commissioner if there is some other party who is available to close the law practice.

Inasmuch as non-attorney family members are not licensed to practice law, and inasmuch as the State Bar may be reluctant to act, it is crucial that a solo practitioner devise a professional will that includes a relationship with another "assisting attorney."

Written Instructions to the Assisting Attorney

In a professional will, written instructions should be given to the assisting attorney, office staff and family members. The instructions should include information and guidance to minimize uncertainty, confusion and oversight.

- The directives should detail where other important client information is stored.
- The arrangement with the assisting attorney should incorporate a signed consent form authorizing the assisting attorney to contact clients and others about the suspension or closure of the law practice.
- It should include provisions for the disposition of closed files, the disposition of office equipment, drawing checks on the office and trust accounts, payment of current office and client liabilities, billing for and collection of fees on open files and accounts receivable, and access to password protected electronic files.
- Arrangements for payment by the solo practitioner or his/her estate to the assisting attorney for services rendered should also be made.

What Should Be in Your Professional Will

Your professional will should address the following issues:

- ▶ Instructions about current office procedure and time/billing records
- ▶ Proper documentation of files
- ▶ Client notification
- ▶ Disposition of clients' files
- ▶ Management of clients' trust accounts
- ▶ Written agreement with Assisting Attorney to close practice
- ▶ Plan for reimbursement of estate for attorney's practice

Duties of the Assisting Attorney

In acting in this capacity, the assisting attorney is assuming some liability. Though the State Bar of Arizona has not spoken on this issue, other state bars have addressed the duties of lawyers who are either executors of deceased lawyers' estates or who are partners of deceased lawyers. The assisting attorney owes the client a level of care that includes giving notice to clients, reviewing and disposing of client files, and keeping information confidential.²²

Due to this, it is crucial to establish the scope of the assisting attorney's duty to the practitioner and his or her clients at the onset of the relationship. It should be clear that the assisting attorney does not represent an incapacitated attorney or the estate of a deceased attorney. If the assisting attorney represents the practitioner, then he or she may be prohibited from representing the practitioner's clients on some, or possibly all, matters. Under this arrangement, the assisting attorney would be prohibited from informing the clients of any legal malpractice or ethical violation. However, if the assisting attorney does not represent the incapacitated practitioner or the practitioner's estate, then he or she may have an obligation to inform the client of any errors.

Regardless of whom the assisting attorney represents, he or she must be aware of any potential conflicts of interest in providing legal services to the clients of the practitioner or in reviewing confidential information in client files. A system for checking conflicts should be developed prior to the assisting attorney stepping into the shoes of an incapacitated or deceased attorney.

Trust Accounts

The assisting attorney will certainly need to be granted access to the clients' trust accounts. If there is no arrangement in place, the clients' trust funds will remain in the trust account until a court orders access.²³ In many cases, clients will need access to that money in order to hire new

lawyers, and any delay may put clients in difficult positions. This is likely to annoy the client and prompt ethics or malpractice complaints. Although arranging access ahead of time might seem like a good idea, careful consideration should be given as to when an assisting attorney should be granted access to the clients' trust accounts. A solo practitioner might be held responsible if the assisting attorney misappropriates money and the clients suffer damages.

The best practice in the case of incapacity would be to execute a springing power of attorney limited to access to the client trust account. This would limit the assisting attorney to having access to confidential information and trust accounts only when the solo practitioner is incapacitated. Moreover, a solo practitioner might consider naming the State Bar of Arizona as an agent, of lowest priority, under the power of attorney. Then, in the event that the assisting attorney was for any reason unable or unwilling to serve in that capacity, the State Bar would be granted immediate access to the incapacitated attorney's files and trust accounts without the necessity of obtaining a judicial order. Because banks and other financial institutions are not required to accept powers of attorney, the attorney executing the power of attorney should check with the bank or financial institution regarding its policy on accepting them.

Assisting Attorneys and Solo Practice

There are also special considerations upon the death of a solo practitioner. If another attorney had been authorized to administer the solo practitioner's practice, that authority terminates upon death. In that event, the personal representative of the estate has the legal authority to manage the practice. It is essential that the personal representative be aware of the arrangement with the assisting attorney. He or she alone can permit the assisting attorney to proceed. In order to prevent unnecessary delay, a solo practition-

er should execute an up-to-date will or revocable living (*inter vivos*) trust. If there is no estate plan in place, family members may dispute who is named as personal representative of the estate and cause unnecessary delay in probate court.

In a solo practice, the law practice may or may not be the only asset subject to probate. Although probate may not be as cumbersome as it once was, there are frequently delays associated with a typical probate proceeding. One fact that may have a direct impact on a law practice is that a personal representative cannot be appointed in an informal probate proceeding until at least 120 hours after the death of the decedent.²⁴ Worse, if a formal probate proceeding is required, Arizona's probate code requires that at least 14 days' notice be given before a hearing can be held.²⁵

One solution might be to create an *inter vivos* trust, which, if done properly, would allow the estate to pass outside of the probate process and avoid any unnecessary delays associated with it.

Insurance Policies and Solo Practice

In addition, it would be wise for solo practitioners who do not keep adequate funds for closing the law practice to maintain a small insurance policy that would be payable to the (trust) estate for the purpose of closing the practice. If assets are owned in joint tenancy, as is frequently done with a spouse, those assets would likely pass outside of the probate process.

Of course, there is a problem if the joint tenants die simultaneously or if the solo practitioner is the last to die. In that case, there may not be sufficient liquidity to pay the assisting attorney or to pay the staff, rent or other expenses during the transition period.

Experience teaches that it is prudent for a solo practitioner to operate within a limited liability company.²⁶ These statutes allow the practicing attorney to transfer the business assets into an LLC in which the practitioner is the manager and retains control of the daily business of the law firm, but the practitioner's estate would have an ownership interest but no operational control. In the event of incapacity or death, the operating agreement could dictate the management procedures and name a successor manager to operate the law practice. This

successor manager could be the assisting attorney, as mentioned previously.

Client Files

Another issue of contention is the disposition of client files. ER 1.15 and 1.16 speak to this issue.

Clearly, lawyers have a duty to safeguard client property.²⁷ A lawyer is also required to give notice to the client in the event representation is terminated. Upon termination, a lawyer must take the steps necessary to protect client interests.²⁸ This not only requires client notification but also the surrender of client papers and property.²⁹

However, a lawyer does not have a general duty to preserve all files permanently.³⁰ The cost of storage would be substantial and could affect the cost of future legal services. Certainly, the public interest is not best served by avoidable additions to the cost of legal services. However, a lawyer has a duty to preserve certain types of files indefinitely.³¹ Clients reasonably expect that the lawyer will preserve valuable and useful information in the files and that it will not be prematurely destroyed. How then is an assisting attorney to dispose of an incapacitated or deceased attorney's files?

As previously mentioned, clients should be notified in the event of an attorney's incapacity or death and be given ample opportunity to retrieve the files. Although some files will be retrieved by clients, a determination must be made by the assisting attorney as to how to dispose of any remaining files. A lawyer has an ongoing obligation to minimize harm to his or her prior clients after withdrawal or termination of the matter.³² Materials in a client's file are generally owned by the client, but the lawyer is ethically required to use reasonable efforts to return all client property upon the termination of representation.³³

There is some question as to whether files can be destroyed and, of course, the destruction of certain files would be unreasonable and potentially prejudicial. These materials cannot be destroyed until reasonable efforts have been made to return them to the client. Notice of the property's destruction must also be given.³⁴ After reasonable notice has been given, materials must be safeguarded for a period of time equal to that under Arizona law for the abandonment of personal property.³⁵ A lawyer should establish and maintain a written client file retention and destruction pol-

Look to the Agreement

There may be situations under which the shareholder's agreement cannot or does not prevent transfers of interests in the entity. In these situations, the shareholder's agreement may contain terms that limit the rights acquired by the new owner. Frequently, the deceased attorney's estate, represented by a court-appointed personal representative, would be the new owner of the business interest in the law firm. The personal representative is typically not a licensed attorney. A shareholder's agreement may provide that the new owner can only have access to distributions of income that otherwise would have been made to the transferring owner, but has no right to participate in the management of the law firm. In the partnership context, that type of new partner is termed an "assignee" partner. The "assignee" may receive no voting rights or access to financial reports. If the law firm is set up as a professional corporation or professional limited liability company, then Arizona statutes dictate that only individuals licensed to provide the professional service may be partners to the business.¹

It is more difficult to limit the rights of corporate shareholders than it is for partnerships or limited liability companies because the laws regarding partnerships and limited liability companies reflect the more personal nature of a partnership. However, stock transfer agreements can be very effective. Once the owners have determined how an interest in the business is to be valued, they need to address the terms of payment for that value and the source of funds for the payment.

Unfortunately, there are a limited number of funding methods available. Some of the most frequently used are life insurance, installment sales under predetermined terms, cash, and methods based on the business cash flow. Each of these methods has its own benefits and costs:

Life insurance is sure to be there when an owner dies, but the premiums take capital from the business.

Installment sales, cash, and methods based upon the business's cash flow allow earnings to be invested in the business rather than in a life insurance policy. But when it is time to pay the price, the departing owner may find that his or her future, or the future of his or her heirs, depends upon unsympathetic buyers. Regardless, there needs to be some provisions in the stock transfer agreement that compensate the deceased or incapacitated attorney's estate for its interest in the law firm.

1. A.R.S. §§ 10-2220 & 29-844 (2006).

icy. The retention policy should take into consideration the client's foreseeable interests.

In some cases, the lawyer may fulfill his or her ethical obligations by tendering the entire file to the client at the termination of representation. Indefinite file retention is appropriate for probate or estate matters, homicide cases, life sentence cases and lifetime probation cases. For most other matters, the Ethics Committee has stated that five years is appropriate.³⁶

Conclusion

Sound practice management dictates that every lawyer should plan before incapacity or death by using an assisting attorney, whether it is a solo practitioner engaging another attorney or another attorney within a partnership, to attend to client matters and wind up the law practice. Although the State Bar has some procedures in place for this event, it is a serious problem that is best left to the attorney and not the State Bar. Leaving the State Bar of Arizona in control is not only time consuming and expensive for the Bar, but it does little to ensure adequate representation for clients, to whom the highest duty is owed. Ideals are not enough; a guide to action is essential if management is to be effective.

The Rules of Professional Responsibility emphasize the fiduciary nature or the lawyer's obligations of competence and diligence. The preparation of a Professional Will is merely an extension of these duties. 

endnotes

1. Lynn O'Shaughnessy, *You Can't Take It With You, But You Can Do a Better Job of Leaving Your Estate in Shape*, available online at www.aarp.org/bulletin/yourmoney/a2004-03-17-estate_planning.html (March 2004).
2. Arizona Ethics Op. 04-05 (2005).
3. Statistics according to the State Bar of Arizona.
4. *Id.*
5. ER 1.1-1.3, Rule 42, ARIZ.R.S.Ct. (Dec. 1, 2003).
E.R 1.1: Competence: A lawyer shall provide

competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

E.R. 1.3: Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.

6. Rule 66-69, ARIZ.R.S.Ct. (amended Jan. 1, 2007).
7. Comment 5 to Rule 1.3 of ABA Rules of Professional Conduct (2004) states, "To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action." Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).
8. ER 1.17, ARIZ.R.S.Ct. (Dec. 1, 2003) (ER 1.15 provides, "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account 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."); *Matter of Scanlan*, 697 P.2d 1084 (Ariz. 1985); *In re Holt*, 478 P.2d 510 (Ariz. 1971).
9. Barbara S. Fishleder, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, Oregon State Bar Professional Liability Fund.
10. ER 1.3, ARIZ.R.S.Ct. (Dec. 1, 2003).
11. Arizona Ethics Op. 04-05 (2005); ABA Formal Op. 92-369 (Dec. 7, 1992).
12. Fishleder, *supra* note 9. *Handbook for a Trustee of the Law Practice of a Missing, Incapacitated, Disabled, or Deceased ("MIDD") Attorney*, North Carolina State Bar (Revised March 2003); *Handbook for a Receiver of the Law Practice of a Disabled or Missing or Deceased ("DMD") Maine Attorney*, Maine Board of Overseers of the Bar (August 2005).
13. *Murphy v. Riggs*, 213 N.W. 110 (Mich. 1927) (fiduciary obligations of loyalty and confidentiality continue after agency relationship concluded); *Eoff v. Irvine*, 18 S.W. 907 (Mo. 1892); *Matter of Estate of Shano*, 869 P.2d 1203 (Ariz. Ct. App. 1993); *Nichols v. Elkins*, 408 P.2d 34 (Ariz. Ct. App. 1966).
14. See *Vollgraff v. Block*, 458 N.Y.S.2d 437 (Sup. Ct. 1982); *Mageary v. Hoyt*, 369 P.2d 662

- (Ariz. 1962) (attorney owes duty of utmost good faith to his client and must inform his client of matters that might adversely affect client's interests).
15. DR 6-101(A)(3) of the ABA Model Code of Ethics provides, "A lawyer shall not neglect a legal matter entrusted to him." This canon correlates to the ABA Model Rule 1.1 for competence; *In re Jamieson*, 658 P.2d 1244 (Wash. 1983) (neglect due to ill health and attempted retirement); *In Re Whitlock*, 441 A.2d 989 (D.C. 1982) (neglect due to poor health, marital difficulties and heavy caseload); *Committee on Legal Ethics of West Virginia State Bar v. Smith*, 194 S.E.2d 665 (W. Va. 1973) (neglect due to illness and personal problems).
 16. *In Re Moynihan*, 643 P.2d 439 (Wash. 1982) (three objectives of lawyer disciplinary action are to prevent recurrence, to discourage similar conduct by other lawyers and to restore public confidence in the bar).
 17. Arizona Ethics Op. 04-05 (2005).
 18. ABA Model Rule 1.17.
 19. ER 1.17, ARIZ.R.S.CT. (Dec. 1, 2003).
 20. *Id.*
 21. Kentucky Bar Association (June 1998) Ethics Op.-KBA E-405-refers to SCR 3.395.
 22. Ohio State Bar Op. 00-02 (2000); New York County Lawyers' Ass'n Op. 709 (1996); Maryland Op. 89-58 (1989).
 23. Rule 66-69, ARIZ.R.S.CT.
 24. A.R.S. § 14-3307 (2006).
 25. *Id.* § 14-3403.
 26. *Id.* §§ 29-601 to 29-857.
 27. ER 1.5, ARIZ.R.S.CT. (Dec. 1, 2003) (complete records of account funds and other property shall be preserved for a period of five years after termination of representation).
 28. ER 1.16(d), ARIZ.R.S.CT. (Dec. 1, 2003).
 29. *Id.*
 30. ABA Informal Ethics Op. 1384 (Mar. 14, 1997).
 31. *Id.*; Arizona Ethics Op. 98-07 (June 1998).
 32. Arizona Ethics Op. 98-07 (June 1998) (*citing Duties after Withdrawal*, ABA/BNA Lawyers Manual on Professional Conduct, at 31:1201 (1996)).
 33. ER 1.16, ARIZ.R.S.CT. (Dec. 1, 2003) provides "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client. The lawyer may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights."
 34. Arizona Ethics Op. 98-07 (June 1998).
 35. Arizona Ethics Op. 91-01 (Jan. 15, 1991) (refers to the Uniformed Unclaimed Property Act, A.R.S. §§ 33-301 to 44-340).
 36. *Citing* E.R. 1.16(d) and Rule 43, ARIZ.R.S.CT.