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## **Handbook for Court-Appointed Trustees**

### **I. Introduction**

This handbook is designed to assist an attorney who is appointed as a trustee under Rule 3.27(c) or Rule 3.29 of the Rules of Lawyer Disciplinary Procedure. No single document or checklist can answer every question that a trustee will encounter. However, the following material is intended to answer some basic questions. If additional questions or problems arise which are not covered in this Handbook, the trustee is encouraged to contact the Office of Disciplinary Counsel for further assistance. The Office of Disciplinary Counsel greatly appreciates the service that court-appointed trustees provide to the public and the profession.

### **II. Appointment**

There are two provisions in the Rules of Lawyer Disciplinary Procedure which permit the appointment of a trustee.

The Supreme Court of Appeals “may appoint may appoint a trustee to protect the interest of the lawyer’s clients during the pendency . . . proceedings” initiated by the Office of Disciplinary Counsel pursuant to Rule 3.27. The Office of Disciplinary Counsel may initiate proceedings under Rule 3.27(a) based “[u]pon receipt of sufficient evidence demonstrating that a lawyer (1) has committed a violation of the Rules of Professional Conduct or is under a disability and (2) poses a substantial threat of irreparable harm to the public, . . . .”

In addition, under Rule 3.29 of the Rules of Lawyer Disciplinary Procedure, “[w]hen a lawyer has disappeared, died, or has abandoned his or her law office or has been suspended

or disbarred and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, the Supreme Court of Appeals, upon written request by the Office of Disciplinary Counsel, may authorize the chief judge in the circuit in which the lawyer maintained his or her practice, to appoint a lawyer or lawyers to inventory the files of the disappeared, deceased, abandoning, suspended or disbarred lawyer and to take such action as seems indicated to protect the interests of the lawyer and the lawyer's clients."

### **III. Duties**

The duties of the trustee can vary widely based upon the nature of the attorney's practice. In some cases, the attorney's practice may not have been very active and little needs to be done to protect his or her clients. In other cases, particularly where the attorney had a large practice or disappeared suddenly, the trustee's job may be more complicated and time consuming.

The trustee's most important duty is to protect the interests of the lawyer's client and to expeditiously facilitate the return of client files. How this task is accomplished may vary depending on the such factors as the size and type of practice the attorney maintained, whether the attorney is cooperative with the trustee, the location of the attorney's files and their accessibility, and whether the attorney is represented by counsel.

The trustee is reminded that Rule 3.29 of the Rules of Lawyer Disciplinary Procedure provides that "[a]ny lawyer so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the lawyer to much such an inventory."

#### **A. Obtaining Access to Attorney's Office and Client Files**

After the order of appointment is signed by the chief judge in the circuit in which the attorney practiced, the trustee should take action to gain access to the attorney's office and files. Ordinarily, gaining access to the attorney's office should not be a problem. The trustee may contact the attorney, or relatives of the attorney or a member of the attorney's office staff to obtain a key to the attorney's office. If the trustee encounters a problem gaining access to the attorney's office, the trustee should contact the Office of Disciplinary Counsel for guidance.

#### **B. Reviewing Client Files**

The trustee should immediately take steps to secure the attorney's records and files. The trustee should immediately remove the attorney's records and files. However, if a

trustee is unable to secure the attorney's records and files in the trustee's office, or determines that it is necessary to maintain the attorney's records and files in a separate storage facility, the trustee shall contact the Office of Disciplinary Counsel for guidance. The trustee's main concern should be the attorney's client files and records. Do not remove personal effects or other office equipment.

The trustee should first review the attorney's client files to determine which are active and which are closed. Clients with active matters should be contacted first and advised of the need to obtain new counsel and/or make arrangements to pick up their files. A record of the file review and communications to the client should be maintained by the trustee. Additional information which might also be included is which files have been reviewed, the status of the case and what was done with the file. *See*, Attachment 1.

### **C. Contacting Clients**

Clients with active matters should be contacted first and advised of the need to obtain new counsel and/or make arrangements to pick up their files. Notification should also be made to all clients whose matters are closed or inactive. Record of the communication should be maintained, and the clients should be advised to contact the trustee to pick up their files. There may be occasions when the trustee is unsuccessful in the initial attempts to contact all of the attorney's clients. However, the trustee is expected to exercise due diligence in undertaking further attempts at contact.

While contacting the client may be done by telephone, mail, or any other means the trustee deems appropriate, based on time constraints and other considerations. The following steps are recommended:

1. A letter should be sent to the client's last known address. It is important that this letter advise the client of the trustee's appointment due to the suspension, disbarment, death, or disability of the attorney and of the need to obtain new counsel. It is also important that the letter also advise the client how to obtain the client file from the trustee but that the file may be destroyed, at a later time, if it remains unclaimed. *See*, Attachment 2.
2. If the trustee does not receive a response to the first letter, and there was no indication that the letter was received by the client, a second letter may be sent by certified mail for the purpose of ensuring and confirming delivery. *See*, Attachment 3.
3. Some clients, although successfully contacted, may fail to follow through on making arrangements to pick up the file or consent to its destruction. Here,

since there is confirmation that the client has received the initial notice, the trustee may send a follow-up reminder by regular mail. *See*, Attachment 4.

4. The trustee may seek authorization from the Office of Disciplinary Counsel to place a notice in a local newspaper or other publication directing the attorney's clients to contact the trustee. *See*, Attachment 5.
5. When final disposition of the attorney's files has been determined, the trustee may also send a Final Notice to the attorney's clients regarding the destruction or final location of the client files. *See*, Attachment 8.

#### **D. Protecting the Client's Interest**

The trustee should take steps to avoid foreseeable prejudice to the clients, remaining especially cognizant of applicable statutes of limitation or other time-sensitive considerations. This may include contacting opposing counsel, contacting the court, and reviewing incoming mail. The trustee may review mail in the attorney's office, if possible, or may make arrangements, only if absolutely necessary, to have the mail forwarded to another location. The trustee is not required to act as attorney for the client, or provide legal services other than those necessary to prevent harm to the clients. In addition, the trustee shall not solicit employment from the attorney's clients.

#### **E. Delivering Files to Clients**

The trustee should ask each client to sign a release, indicating that the client would like to have his or client file released and an acknowledgment of receipt. *See*, Attachments 6 & 7. The trustee should require clients to produce appropriate identification before releasing the file. Absent instruction from the client, the file should not be released to anyone other than the client. It helps to tell the clients in the initial notification letter how the files will be returned and the reason for the security measures. In scheduling pick-up dates, the trustee may wish to designate one or more specific dates and times when clients can come to the trustee's office, or other location, to obtain their files. This may be particularly helpful in situations in which publication is used or if the files are voluminous. In addition, a copy of the release/receipt/acknowledgment should be maintained by the trustee.

Client files may be returned by certified mail with the client's consent. The trustee should keep proof of delivery of the file. Mailing files to the attorney's client's can be expensive and trustees are encouraged to have clients pick up their files in person, if possible.

#### **F. Representing Clients and Recommending New Attorneys**

Often the attorney's clients will ask the trustee to recommend successor counsel. However, the trustee should not recommend successor or substitute counsel to any client on matters relating to the inventory. Referrals may be made to local bar associations for new counsel or to the West Virginia State Bar's Lawyer Referral Service. The contact telephone number is 304-558-7991.

The trustee may represent the attorney's former clients only after he or she has been relieved of his or her trustee duties by the Office of Disciplinary Counsel. Furthermore, the representation of the client must be on a new matter and not related to the inventory.

Clients who believe they are owed a refund of fees, or otherwise entitled to funds belonging to the attorney, should be encouraged to seek independent legal counsel and/or contact the Client Protection Fund at 304-558-7993. The Client Protection Fund should be contacted directly by the client for specific information about the application of the Client Protection Fund to the client's situation.

#### **G. Preservation and Disposal of Files and Records**

Client files remaining after the trustee has concluded the inventory process and exercised due diligence in contacting clients and returning files, and files for matters that have been inventoried but have been closed for five years or more, may be destroyed. However, before taking any action with the files remaining in the trustee's possession, the trustee should consult with the Office of Disciplinary Counsel for direction on the disposal of the files. There may be instances when the files should not be destroyed and other arrangements must be made for the storage of the files.

The method of destruction is within the discretion of the trustee, after consultation with the Office of Disciplinary Counsel, and may include shredding or incinerating. The West Virginia Lawyer Disciplinary Board has issued a Legal Ethics Opinion entitled L.E.O. 2002-01, "Destruction of Closed Client Files." This Legal Ethics Opinion provides more detailed instruction regarding the destruction of client files older than five (5) years. The trustee is encouraged to consult L.E.O. 2002-01 for more information.

Finally, the trustee should deliver to the Office of Disciplinary Counsel, the complete file of all records and documents related to his or her appointment as trustee. Such records should include the inventory review form, correspondence, executed receipts, motions, etc. These records will be maintained by the Office of Disciplinary Counsel.

#### **H. Dealing with the Attorney's Office Account**

Ordinarily, the trustee will have no duties regarding the office or business account,

since no client funds should be present in such account. The trustee's chief obligation is to protect the interests of the attorney's clients by distributing client files as quickly as possible. Clients who believe they are owed a refund of fees that may be in the office account should be encouraged to seek independent legal counsel to resolve those matters. The trustee should not act as an advocate for the clients in fee dispute matters.

Similarly, the trustee is not obligated to take extraordinary steps to collect fees owed to the attorney. Before taking any action regarding an attorney's office account, the trustee should consult with the Office of Disciplinary Counsel. If the attorney is question is deceased or has some other legal representative, the trustee should contact the representative of the estate.

However, bank and bookkeeping records relating to the attorney's practice should be preserved by the trustee and not destroyed. It is not the function of the trustee to serve as a successor signatory to the attorney's accounts, nor to disburse funds or otherwise resolve competing claims to funds in the attorney's accounts. In the event another individual or attorney is appointed to serve as successor signatory, or to take control of such records for the purpose of disbursing funds from such accounts, the trustee should comply with a request for the turnover of such records. Upon discharge, all bank and bookkeeping records remaining in the trustee's possession should be delivered to the Office of Disciplinary Counsel.

#### **IV. Getting Paid**

Acting as trustee can be a difficult and time consuming matter. However, it is often a very rewarding experience, as the trustee is rendering a great service to the public, to the other members of the profession, the courts, and to the Office of Disciplinary Counsel. Each trustee's experience and problems are unique and it is impossible to answer every question ahead of time. Every trustee is encouraged to contact the Office of Disciplinary Counsel any time a problem arises. The Office of Disciplinary Counsel is here to help you through the process.

Trustees will be compensated for their reasonable time at the rate of \$75.00 an hour, subject to approval by the Office of Disciplinary Counsel. In addition, trustees will be compensated for other reasonable expenses incurred as part of their appointment as trustee.

Compensation Rate:

\$75.00 per hour (subject to approval by the Office of Disciplinary Counsel) -  
time for travel not compensable

The Office of Disciplinary Counsel will pay the trustee the following reasonable expenses. **Office overhead, including rent, for both the trustee and the subject attorney will not be reimbursed by the Office of Disciplinary Counsel.**

Time is recorded by tenths of an hour as follows:

.10 = 6 minutes

.20 = 12 minutes etc.

Expenses:

Faxes: Only the costs of long distance facsimile transmissions may be reimbursed. Copies of paid bills must be submitted.

Phone Charges: Only long distance telephone charges may be reimbursed. Copies of telephone bills must be submitted.

Photocopying: 15¢ per copy limit, the number of copies must be indicated. A receipt must be submitted for copying in excess of 50 copies.

Postage: \$5.00 limit without receipts. Federal Express, Certified Mail, etc., may be reimbursed with receipts.

Other expenses: Other expenses not mentioned above must have prior approval from the Office of Disciplinary Counsel.

Time Records: Trustees are expected to maintain detailed and accurate time records. Those records should include client names, dates, work performed, time expended, and costs incurred. Descriptions should be sufficiently specific and detailed to enable one to understand the nature and extent of the services performed. Where appropriate, including appointments that are lengthy or financially burdensome, a trustee may contact the Office of Disciplinary Counsel to discuss interim applications for reimbursement of expenses prior to the completion of all services.

Use of Office Staff: In discharging his or her duties, the trustee should be as frugal as possible by, among other things, using support staff to do the clerical work. The rate for support staff will be paid up to \$20.00 an hour. Expenses associated with using support staff must have prior approval from the Office of Disciplinary Counsel.

**F. Reporting to the Office of Disciplinary Counsel & Discharge**

The trustee's last duty is to report his or her activities to the Office of Disciplinary Counsel. Although trustee reports may vary depending on the situation, the trustee's report should include, at a minimum, a description of the number of files delivered to clients and/or their attorneys, the number of files unclaimed, and the efforts made to contact clients. The trustee may also include any information the trustee may feel is appropriate under the circumstances of the situation. Upon receipt and review of the trustee's report and request for payment, the Office of Disciplinary Counsel will discharge the trustee from his or her duties.