

**Absences from Your Practice:  
From Temporary Vacations to More Permanent Leaves of Absence**

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## **Absences from Your Practice: From Temporary Vacations to More Permanent Leaves of Absence<sup>1</sup>**

### **I. Introduction**

As a solo attorney, the demands and unpredictability of your practice require you to stay actively engaged at all times. But what about those times when you are not actively engaged in your practice, whether by choice or by happenstance? How do you manage your law practice—both ethically and practically—if you take a vacation, become ill or injured, want to retire, or become permanently incapacitated or die while in active practice? This article covers these temporary and permanent disengagements from your law practice and provides roadmaps for navigating each ethically and practically.

The *Project Perspective* is sprinkled throughout the article since acceptance to a Court Appointed Counsel panel carries with it an expectation that the work will be performed by counsel of record. If the attorney will be unable, for a variety of reasons, to handle the basic responsibilities of the case in the long term, the attorney should alert the administering project about the circumstances, including the possibility of being relieved. For temporary coverage, such as vacations and short illnesses, continuances may be the best solution. If that is not feasible, it is advisable to have standing arrangements with another attorney of equivalent experience to cover workload during absences. Panel attorneys should not count on the assigned project staff attorney to cover for them.

In addition, the Appellant Indigent Defense Oversight Advisory Committee (AIDOAC) has adopted a statewide policy that severely restricts the use of associate counsel in all Assisted appointment cases. Only in rare instances will the project waive these restrictions. For extraordinary circumstances, the panel attorney must request preapproval from the project's Executive Director. (For more information, read "AIDOAC Policy on Use of Associate Counsel" in the [CCAP panel manual](#).)

For the appropriate case, CCAP has three useful samples online in the [Motion Samples Book](#) under "A" (Associate Counsel) for a formal handling of associating counsel into the case: (1) a motion for authority to associate counsel; (2) a sample associate counsel agreement; (3) the required associate counsel hours log (also available electronically as part of the WebClaims process).

With these Court Appointed Counsel rules in mind, this article gives counsel a roadmap to consider the need, the ethics, and the management of your practice during your absence.

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<sup>1</sup> This article was assembled by panel attorney Conness Thompson. CCAP wishes to thank Ms. Thompson for sharing her insights for the private practitioner's perspective. The interwoven project perspective is offered by CCAP but practices for other projects may vary. As always, counsel is encouraged to determine what approach works best for your own practice.

## Absence Matrix

	<b>Temporary</b>	<b>Permanent</b>
<b>Planned</b>	Vacation	Retirement
<b>Unplanned</b>	Illness / Injury	Permanent Incapacity or Death

## II. Your Duties as an Attorney

California’s Rules of Professional Conduct and the Business and Professions Code require competence and client communication from a lawyer. Additionally, a lawyer may not abandon his or her client. These are duties that are at risk of compromise during any disengagement from your practice. However, with advanced planning, potential pitfalls in these areas can be avoided.

### A. Rules Prof. Conduct, rule 1.1—Competence

This rule provides that “[a] lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.” (Rules Prof. Conduct, rule 1.1(a).) “For purposes of this rule, ‘competence’ in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.” (Rules Prof. Conduct, rule 1.1(b).) Thus, although you may be on a two-week vacation or laid-up due to an injury, you are still accountable for the legal services for which you were engaged, and you must perform these services competently.

### B. Rules Prof. Conduct, rule 1.3—Diligence

Another rule to be familiar with is Rules of Professional Conduct, rule 1.3, which addresses an attorney’s diligence. This rule provides that “[a] lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.” (Rules Prof. Conduct, rule 1.3(a).) This rule defines “reasonable diligence” as “mean[ing] that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.” (Rules Prof. Conduct, rule 1.3(b).) As with an attorney’s duty of competence (Rules Prof. Conduct, rule 1.1), an attorney’s duty of diligence to his or her client is not excused when the attorney is on vacation or recovering from an injury or illness.

**C. Rules Prof. Conduct, rule 1.4 & Bus. & Prof. Code, § 6068, subd. (m)—Communication**

Rule 1.4 requires that a lawyer “keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.” (Rules Prof. Conduct, rule 1.4(a)(3).) Moreover, Business and Professions Code section 6068, subdivision (m), provides that “[i]t is the duty of an attorney . . . [t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” “Failure to communicate with, and inattention to the needs of, a client may, standing alone, constitute grounds for discipline.” (*Layton v. State Bar* (1990) 50 Cal.3d 889, 904; see also *Martin v. State Bar* (1978) 20 Cal.3d 717, 722 [“By failing to communicate to her clients, petitioner breached her professional responsibility.”].)

*Project Perspective:*

In some cases, communicating with a client may become difficult. In any event, an attorney’s ethical obligations prohibit cutting off all means of communication with a client. At a minimum, you must continue to have an open line of communication with your client, such as legal mail, and keep your client informed of significant developments in the case. There is nothing wrong with directing your client to communicate with you only by legal mail for secure communication, then respond only as ethically required and necessary to the case.

“Significant developments” include your appointment on the case, when the opening brief is filed, when the respondent’s brief is received, when the reply brief is filed, when oral argument is set, after oral argument, and when the opinion is received—both providing them a copy of the opinion along with advising them of petition due dates and deadlines.

For more tips on client communications see, “Effective Communications with the Client and Trial Counsel” on the CCAP website:

[http://www.capcentral.org/procedures/client\\_matters/communication.asp](http://www.capcentral.org/procedures/client_matters/communication.asp)

## **D. Rules Prof. Conduct, rule 1.16—Terminating Representation**

Improperly terminating representation, including abandoning a client, may violate rule 1.16. This rule states that “[a] lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with rule 1.16(e).” (Rules Prof. Conduct, rule 1.16(d).)

Abandonment of a client can either be physical or in effect. (*In Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657.) For example, “respondent’s leaving a client in the midst of a hearing is an abandonment of a client and a violation of [former] rule 3–700(A)(2) of the most fundamental sort.” (*In Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.) By contrast, “[t]he Court has recognized that inadequate communication can be an element in violations of other attorney duties. So, in *Baker v. State Bar* (1989) 49 Cal.3d 804, 816–817, fn. 5, the Court noted that an attorney may effectively abandon a client under [former] rule 3–700 . . . even absent the formation of an intent to withdraw when he or she ceased coming into the office *and* could not be contacted by his or her clients.” (*In Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. 657.)

### *Project Perspective:*

Before a panel attorney can file either a request to abandon an appeal, or a *Wende/Phoenix H.* brief, counsel must first discuss the contemplated action with the CCAP buddy, regardless of whether the appointment is assisted or independent. Depending on the case, the staff attorney may desire only a telephonic discussion, or may ask to review part or all of the record on appeal.

## **III. Temporary Disengagement from Your Law Practice**

Once an attorney commits to represent a client, the attorney may owe a duty to that client. Failure to comply with a duty owed to a client may result in legal malpractice or disciplinable misconduct. Pressure to comply with a sworn duty can make it difficult to take the type of vacation that allows an attorney to fully relax and recharge. Similarly, it can make it difficult for an attorney to take the rest and recuperation necessary to recover from a short-term injury or illness. Both of these situations are especially difficult for the solo practitioner. However, both are manageable with advanced planning.

### **A. Planned Temporary: Vacation**

For the solo attorney, the thought of stepping away from one’s practice for a week or more to take a vacation can be daunting. Instead of creating a healthy work-life balance, the vacation often seems to increase the stress and pressure a solo attorney faces. As a result, it often feels easier not to take a vacation. But it does not have to be this way. With some advanced planning and a vacation buddy, it is possible to take—and enjoy—a proper vacation.

## 1. Choosing a Vacation Buddy

One of the keys to peace-of-mind on a vacation is utilizing a vacation buddy. In choosing a vacation buddy, there are several things to consider. One important factor that should go without saying is that your vacation buddy should be someone you know well enough to determine his or her trustworthiness and accountability. If you think you will spend your whole vacation worrying about whether a particular potential vacation buddy is staying on top of things, this is the wrong person for you.

Equally important is to find a vacation buddy whose practice is similar in dynamic to yours. For example, if your practice covers both criminal trials and criminal appeals, but your prospective vacation buddy's practice is 100% dependency appeals, this attorney may lack the perspective necessary to address anything unexpected that comes up, especially on the trial side. In such a scenario, it may make sense to have one vacation buddy cover your trial matters, and a different buddy handle your appellate matters. If, on the other hand, what you need from a buddy is primarily checking the online dockets for your cases and filing already-prepared EOTs, then a trustworthy dependency appellate attorney should work fine covering your criminal appellate practice.

Another consideration, given the varied practices of the district Courts of Appeal, is to find a vacation buddy who practices in the same Courts of Appeal as you. For example, if your vacation buddy does not practice in the Third and the Fifth and you need coverage for these districts, your buddy may not know that these two districts do not look favorably on going into default time on a reply brief that is triggered by the filing of the respondent's brief while you are gone. Of course, if you give your vacation buddy specific instructions on what to file and when, this may not be an issue.

Depending on what you need your vacation buddy to do in your absence, it may be prudent to choose a vacation buddy who has sufficient malpractice insurance to cover his or her association with your cases. “One of the requisite elements of a legal malpractice claim is the existence of an attorney-client relationship or other basis for a duty of care owed by the attorney.’ [Citation.]” (*Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 444.) The attorney-client relationship is usually created by an express contract between the two parties, however, “[t]he relationship also arises from a simple *association* for a particular case.’ ([Citation]; see *Wells Fargo & Co. v. City etc. of S.F.* (1944) 25 Cal.2d 37, 43 [noting that an associated attorney and an attorney of record share the duty of representation][.])” (*Id.* at pp. 444, 445, emphasis in the original.)

Finally, depending on the nature of your practice and what you need a vacation buddy to do, there may be a need to run a conflicts check. An attorney owes a duty of loyalty to his or her clients. This duty is breached if an attorney engages in representation of a new client that is adverse to the interests of a current or former client. (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 491; [former] Rules Prof. Conduct, rule 3–310(C)(3) & (E).) Rules of Professional Conduct, rule 1.7(a), requires an attorney to obtain the informed written consent of a client if there is a conflict. “[A] breach of duty of loyalty based on violation of [this rule]

occurs whether or not confidences are actually revealed in the adverse action.” (*Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1187.)

## **2. Defining Your Vacation Buddy Arrangement**

Once you have selected a potential vacation buddy, broach the subject with him or her. As part of that conversation, be sure to include the scope of what you are needing a vacation buddy to do. Options include, checking your case online dockets, filing EOTs, checking your mail and scanning/emailing to you anything that is urgent, sending form letters to clients related to any milestones that occur, drafting documents, etc. Also, as part of your conversation, be sure to offer a quid pro quo arrangement whereby you would be a vacation buddy for your potential vacation buddy.

Once your targeted vacation buddy has agreed to fulfill that role, decide how formal you both want the relationship to be, i.e., whether you wish to put your arrangement in writing. This decision will be driven in large part by what your vacation buddy will be doing on your behalf. If you only need your vacation buddy to check the online dockets for your cases and mail off already-prepared EOTs, informal is probably fine. On the other hand, if the coverage you are looking for is more involved and/or of a fairly long duration, putting the specifics in writing will help prevent any misunderstandings about what the expectations are.

Additionally, if the actions you need help with involve more than just mailing off already-prepared EOTs, for example the drafting and filing of documents, you might consider paying your vacation buddy for his or her time.

Finally, if your arrangement requires your vacation buddy to work from your office, be sure to show him or her your office set-up. Also, if applicable, introduce your vacation buddy to any staff or office-sharing attorneys.

## **3. Preparing for Your Practice for Your Vacation**

It is possible to achieve a fair degree of peace of mind as related to your practice while on vacation. The secret is to take the time in advance of your vacation to map out the likely timelines for all your open cases and then to strategize about how you will manage each. The following is a suggested game plan for doing this.

### **a. Mapping Your Current Cases**

The first step in preparing your practice for your vacation is to map out the potential timelines for your open cases. How far out in advance you need to start this depends on factors such as the size of the typical record you receive (which drives case turnaround time), the pace at which you accept/are offered cases, etc. For example, if you typically work with cases in the “hundreds of pages” range, turn them around quickly, and accept a new case every three-to-four weeks, then doing your planning six months out is likely too far in advance. However, if planning this far out will persuade you that a vacation is indeed possible, then by all means do so. Just be sure to do additional mapping closer to your departure date. Otherwise, your timeline

will not include cases you accepted one or two months out from your vacation. On the other hand, if you typically work with cases in the “thousands of pages” range and you wait until a month before your vacation to do your mapping, you will likely have lost opportunities to strategize your current cases to your maximum vacation benefit.

Mapping your cases is based on the somewhat predictable nature of appeals, e.g., opening brief due 40 days from the filing of the record, respondent’s brief due 30 days from the filing of the opening brief, etc. For each case you map, come up with a couple timing scenarios for each. For example, if you will be filing an AOB prior to leaving, figure out what the map looks like if the Attorney General or County Counsel files the respondent’s brief without an EOT, with one EOT, with two EOTs, etc. After you have mapped out your current case timelines, the next step is to strategize for maximum vacation benefit.

### **b. Strategizing Your Current Cases**

The objective of strategizing your current cases is to create a case flow that is favorable to your vacation timeframe. For example, you may have an opening brief that is due a couple of days into your vacation. Based on your current workload, you may be in a position to file it two weeks before you leave. However, that might increase the chance that the Attorney General or County Counsel files its respondent’s brief while you are gone (depending on the length of your vacation). Because you can control when you actually file your opening brief, it might make sense to file the opening brief right before you leave, thus removing the likelihood that the respondent’s brief will be filed while you are still on vacation.

#### *Project Perspective:*

CCAP cannot support the practice of filing an EOT for the sole purpose of moving a brief due date to fit a vacation plan, unless the vacation is pre-planned. The practice for both the Third and the Fifth District is that extension requests should be based on needs of the case. For this reason it is not recommended that a “planned vacation” be the sole reason for requesting an EOT, although it could be listed as one factor. These courts expect counsel not to accept an appointment if the vacation plan is already in place at the start of the new case.

Another factor to strategize is financial considerations such as filing an interim claim. You may decide that timely filing an opening brief that is due two weeks before you leave is a better strategy than managing when your briefs are due. Once you file your opening brief, you may then file your interim claim. With luck, and if you have direct deposit, the money may find its way to your bank account around the time you are leaving on vacation, or shortly thereafter.

*Project Perspective:*

The JCC has been specific about where time is billed on a claim form. If we must ask you to move time claimed, we will contact you by email and will wait to hear from you. It is up to you whether to respond to such inquiries while you are away, but will likely result in a delay of processing your claim if you chose not to monitor your email.

Keep in mind that even though you are mapping and strategizing your current case load, you cannot know for certain when things will actually occur. But this does not mean you need to resign yourself to a stressful vacation. By mapping everything out, you will have a better idea of what might conflict with your vacation and then you can proactively address it before you leave. The following are strategies for handling the more common occurrences.

**i. Briefs**

Briefs are fairly vacation friendly. Once you have done your case mapping and strategizing, you will have an idea of possible brief due dates for your cases. Based on this, simply prepare the necessary “just in case” EOTs ahead of time. Should a filing deadline occur while you are gone, your vacation buddy can file the EOT in your absence. Alternatively, you have the option of filing any first EOTs if you can electronically file from your vacation. Simply prepare your EOTs before you leave and then file whatever you need electronically while you are gone. As an aside, remember that if your vacation buddy files anything in your absence, your vacation buddy’s name goes on the proof of service, not yours.

*Project Perspective:*

By court policy, appointed counsel for the case must execute all filed documents (excepting the proof of service). Further, in Third District independent cases, under current court policies, appointed counsel must first obtain the court’s approval for services rendered by associate counsel if the associate is going to sign any pleading or appear at oral argument.

See statewide AIDOAC policy regarding use of Associate Counsel, *infra*.

Regarding the “policies and factors governing extensions of time,” California Rules of Court, rule 8.63, states that “applications to extend time in the reviewing courts must demonstrate good cause.” (Cal. Rules of Court, rule 8.63(a)(3).) “In determining good cause . . . the court must consider . . . a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.” (Cal. Rules of Court, rule 8.63(b)(10).)

## ii. Requests for Oral Argument

Although requests for oral argument do not have a time extension option and have a short 10-day response window, they are easy to manage while on vacation. During your strategizing, determine which of your fully briefed cases you want to argue orally. Then, simply prepare your response before you depart and leave it with your vacation buddy to file. The online docket will note when the oral argument waiver notice was sent out. Some docket postings even include the date by which the response needs to be received by the court. Of course, if you do not wish to request oral argument for any of your fully-briefed cases, let your vacation buddy know this, with instructions that he or she need not do anything should such a notice be issued.

*Project Perspective:*

See above.

## iii. Petitions for Rehearing

Another filing with no time extension option is a petition for rehearing. A petition for rehearing must be filed within 15 days of the date the opinion is filed. (Cal. Rules of Court, rule 8.268(b)(1).) The only exception is where the opinion is not yet final and the presiding justice grants leave to file a late petition for good cause. (Cal. Rules of Court, rule 8.268(b)(4).)

For a vacation in the one-week or less range, you would not need to file a petition for rehearing in a case where the opinion is issued while you are on your vacation. In many cases it would not be critical that you draft the petition while you are gone and you can attend to this when you return.

The likelihood of needing to file a petition for rehearing while on a one- to two-week vacation is slim (because of the timing) but not non-existent. If you are unlucky enough that the opinion issues on the first day of your vacation, and the opinion is such that you are compelled to file a petition for rehearing, then you will need to draft the petition during your vacation and file it immediately upon returning home. Alternatively, you could arrange with your vacation buddy for you to email your final draft of your petition so that he or she can serve and file it for you.

If your vacation is greater than two weeks, the opinion issues at the beginning of your vacation, and you determine that a petition for rehearing is warranted, then you will need to draft the petition while on vacation and email it to your buddy to serve and file, as you will not be back before it is due. If you are taking a vacation longer than two weeks, discuss this potentiality with your vacation buddy before you leave.

*Project Perspective:*

For longer vacations, you may need to arrange with the project and court a formal association of counsel. However, be mindful that AIDOAC has adopted a statewide policy that severely restricts the use of associate counsel in all assisted appointment cases. Only in rare instances will the

project waive these restrictions. For extraordinary circumstances, the panel attorney must request preapproval from the project's Executive Director. (For more information, read "AIDOAC Policy on Use of Associate Counsel" in the [CCAP panel manual](#).)

Further, in Third District independent cases, under current court policies, appointed counsel must first obtain the court approval for services rendered by associate counsel if the associate will sign any pleading or appear at oral argument.

#### **iv. Petitions for Review**

"A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court." (Cal. Rules of Court, rule 8.500(e)(1).) Said another way, a petition for review must be filed between and including the 31st day through the 40th day after the Court of Appeal files its opinion. No extensions of time are available. (Cal. Rules of Court, rule 8.500(e)(2).) Relief from default is rarely granted regardless of the reason for missing the deadline.

Managing the drafting and filing of a petition for review while on vacation is mainly a necessary consideration for those taking an almost six-week long vacation. If you are in this category, you will need to be able to draft and then email to your vacation buddy a completed petition for review. Then your buddy can take care of serving and filing your petition.

Alternatively, even if you decide that you will not be filing a petition for review, you will still need to advise your client of his or her options following the issuance of the opinion. A work-around would be to leave your vacation buddy with a copy of your closing letter template that includes instructions for your client to file his or her own petition for review, along with a list of the addresses for your clients.

#### **c. Additional Peace-of-Mind**

In addition to the suggestions above, there are a couple other actions you might consider taking to increase your peace-of-mind while you are on vacation:

- You might consider cutting back on the number of cases you accept a couple of months prior to your vacation to reduce the pipeline.

#### *Project Perspective:*

When being offered a new case that would conflict with a planned leave of absence, feel free to decline the case due to "vacation" and simply inform CCAP what date you will next be available to take a new case.

- Consider providing your vacation buddy with your contact information in case something comes up that requires your involvement or input.

*Project Perspective:*

Since you are counsel of record and appointed on the case, everything that happens on the case is your responsibility, even while you are on vacation. For this reason, we agree that leaving contact information in case something comes up is a good idea.

- Even with a vacation buddy, for some attorneys, maximum peace-of-mind while on vacation will require being able to check emails, voicemails, and online court dockets on a regular basis. If this is you, plan your vacation to allow for this, for example, in terms of where you travel to, where you lodge, how much downtime there is each day, etc.

#### **4. Notice of Unavailability**

An interesting case dealing with attorney vacations is *Tenderloin Housing Clinic, Inc. v. Sparks* (1992) 8 Cal.App.4th 299. A solo attorney let opposing counsel know the dates she would be on a prepaid overseas vacation. Three days after she left, opposing counsel scheduled the case's most important witness's deposition for a time when the traveling attorney would still out of the county. The travelling attorney did a telephonic ex parte motion for continuance, which the trial court denied. With no other choice, the traveling attorney cut short her vacation and returned home only to have opposing counsel inform her that the deposition had been cancelled. The no-longer traveling attorney sought and was awarded substantial sanctions for the expenses she incurred related to having to cut short her vacation. The court found that while opposing counsel was, of course, entitled to take discovery, the timing of the discovery was in bad faith and solely intended to harass.

Following the *Tenderloin* decision, trial counsel began making it a practice to serve and file a Notice of Unavailability to put opposing counsel on notice not to schedule events in a case during a particular time period. (*Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 74–75.) Given the on-going pressure of filing deadlines and the need to timely respond to matters, the hoped-for “timeout button” sought by the filing of a *Tenderloin* notice of unavailability is understandable. Unfortunately, it does not provide such a timeout in general, or as related to appellate attorneys, as discussed in *Carl v. Superior Court* (2007) 157 Cal.App.4th 73:

[A notice of unavailability] purports to advise the other parties to the action—as well as the court—that the deliverer will not be available for a prescribed period of time and that no action may be taken during that period which adversely affects the unavailable party. To the extent this practice attempts to put control of the court's calendar in the hands of counsel—as opposed to the judiciary—it is an impermissible infringement of the court's inherent powers.

[¶]

[T]he common practice of filing a “notice of unavailability” in the superior court now permeates the appellate court system. We receive them on a regular basis and at all times during the appeal process: they come before the record is filed, they come while the matter is being briefed, and they have even come after a matter has been submitted for decision.

[¶]

*There is no authority . . . for the filing of such a notice in an appellate court. Nor is there any need for such a procedure.* Given the inherent flexibility of the Rules of Court regulating appellate practice, any party who feels the uncomfortable pinch of an oncoming deadline may seek appropriate relief. In those permitted filings a party may make whatever representations it deems necessary about its vacation and business schedules in order to explain why the motion or application should be granted. In short, a “notice of unavailability” is not a fileable document under the Rules of Court and will be returned to counsel.

(*Id.* at pp. 75-77, emphasis added.)

*Project Perspective:*

The question that we hear most often concerns the setting of oral argument because the dates are simply unknown until the calendaring notice arrives in your mailbox: “Do I inform the court ahead of time?” Our courts say no.

In the Third District, counsel should wait until the court has set an oral argument date before notifying the court regarding counsel's unavailability. Once a date has been set, counsel may file a formal request for a continuance if he or she will be unavailable on the scheduled date.

In the Fifth District, counsel should wait until the court sends the oral argument notice that specifies which month the argument is scheduled before notifying the court about counsel's unavailability. This court prefers counsel to include the dates that he or she will be unavailable on the oral argument response form.

**B. Unplanned Temporary: Illness/Injury**

A temporary disengagement from your practice can also be the result of an illness or injury. Nobody plans to get ill or injured, but it does happen. Thus, you can and should prepare

your practice for such an occurrence. While this should be done by every lawyer, if you are a solo attorney, it is especially important. The idea is to put together an office procedures manual that is a repository for all the information that would be needed by someone who steps in to help during your unplanned, temporary absence from your practice. Taking the time now to prepare such a document, while you are fit, is time well-spent. The following is a list of steps to take in putting together your office procedures manual.

## **1. Determining Who You Can Turn To**

Before you start writing your office procedures manual, think about who might be able to help you should you become ill or injured. If your practice is focused on appointed appeals, it might suffice to have this person be a family member. The primary function of this person would be to contact the projects from which you have open cases and explain your situation. This person could also help with sending records to the project or any replacement attorney. None of this requires your family member or friend to assume the role of an attorney.

If your practice is a combination of appointed and retained appeals, or includes trial work, you will likely need to identify one or more “caretaker” attorneys who can help. Without a project to turn to for the retained clients, the person helping you out would best be a lawyer. While family cannot assume the role of a lawyer, they can contact your caretaker attorney. Only the caretaker attorney can review your client files, check work in progress, etc.

## **2. Putting it in Writing**

After you identify who you will turn to in the event of an illness or injury, your next step is to put together your office procedures manual. This manual will become the repository of everything your support system needs to know to ensure that your duty to your clients is not breached. The following is a list of information that should be included in your office procedures manual. Add to it anything additional that is relevant to your situation.

- Computer password
- Email password
- Telephone voicemail password
- Where/how is your computer backed up
- Backup storage password
- Keys to your file cabinet
- Keys to your office (if applicable)
- How alarm system works (if applicable)
- Telephone numbers for the projects from which you take cases
- How your paper files are organized
- How your computer files are organized
- How your backup system is organized
- Where you keep your list of cases/clients
- Where you keep your billing notes
- How your calendar system works

- Any other procedure or dynamic that is necessary to understand how your office works

The format for your office procedures manual is not important. It can be on your computer, in the cloud, on a memory stick, or in a notebook or binder. Do not forget to update your office procedures manual with any changes such as new passwords, new systems, etc. Also, from time-to-time, check with those who have offered to help to make sure they know where and how to access your manual and are still able and available to help out in an emergency.

Finally, since you are going to the effort of putting together an office procedures manual, take this opportunity to also put together in one place all of your personal emergency information. Include a list of your emergency medical contacts, family contacts, and insurance information. Include anything else that might be useful to those helping you.

### **3. Informing Others**

Once you have put together your office procedures manual, meet with the designated family member and/or caretaker attorney and walk through the document with them. Be sure whoever will be helping you is comfortable with your set-up and comfortable with being a resource after you have taken them through the information. Determine where the office procedures manual will be kept and make sure everyone who will be helping you knows where this is.

### **4. State Bar Status: Switching to Temporary Inactive**

Depending on the length of your temporary illness or injury, you might consider changing your bar enrollment status to inactive until you recover. (Bus. & Prof. Code, § 6004.) There is an annual inactive membership fee that you may be able to take advantage of depending on how long your inactive status will be.<sup>2</sup> Going inactive also suspends your MCLE requirements, which will be prorated upon your return to active status. Keep in mind that while in inactive status you are prevented from practicing law. Beware: Continuing to hold yourself out as an attorney while on inactive status may constitute the unauthorized practice of law, a misdemeanor. (Bus. & Prof. Code, § 6126; see also Bus. & Prof. Code, § 6068, subd. (a).)

For more information, go to the California State Bar website for a discussion of active versus inactive status at:

<http://mcle.calbar.ca.gov/Attorneys/Requirements/InactiveorNotEligibleStatus.aspx>

*Project Perspective:*

By statewide policy, any change in your bar status must be reported to each of the projects you work with. For CCAP, contact the Panel Administrator.

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<sup>2</sup> Annual membership fees for inactive membership were \$183.00 as of 2020. (State Bar Rule 2.11, Appendix A.) Annual penalties for late payment may also apply.

## **IV. Permanent Disengagement From Your Law Practice**

There are two ways to permanently disengage from your practice—by choosing to retire, or by dying or suffering permanent disability while you are actively engaged in the practice of law. To prepare for either scenario, an attorney is well-advised to invest time doing advance planning to ensure that his or her clients are protected. Additionally, in the latter scenario—your untimely death or permanent disability—advanced planning will spare your family the stress and chaos of trying to deal with your practice at a time when they are grieving their loss.

### **A. Planned Permanent: Retirement**

This discussion of retirement planning covers three key actions: (1) mapping out your retirement timeline; (2) resolving practice-related contracts; and (3) managing your case/client files. This article will cover retirement from a 100% court-appointed appellate practice.<sup>3</sup>

#### **1. Putting Together a Timeline**

If the idea of retirement is something you are thinking about more seriously than you used to, it is time to put together a timeline that maps out your current caseload. This first step to planning your retirement will give you an idea of what your rough timeframe for retiring might be. Start by compiling a detailed list of all of your open cases. Next, estimate a timeline for finishing the remaining work on each case through the issuance of the remittitur. You may want to do a range for each case—figure out what the timing would look like if the appeal moved at the average rate of your other, similar cases, as well as figure out the timing if it moves more slowly than is typical. Once you have done this for all of your open cases, you will have an idea of when, approximately you would first be in a position to retire from the practice of law.

Once you have a sense of your approximate timeline to retirement think about how you feel about the resulting approximate retirement date. If you find that the timeline is about right, you should stop accepting new cases.

On the other hand, you may find that your first opportunity to retire, based on your current caseload, is sooner than you expected or wanted. If this is so, start by identifying your preferred timeframe for retiring. Next, pick an end month and work your timeline backwards from that, based on the average duration of your cases. This will give you roughly the last month in which you should accept a new case.

You may decide that you want to extend your timeline to retirement in order to push out your targeted retirement date from that determined by your original case mapping. But at the same time, you may be interested in cutting back on your caseload. If this is so, determine at

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<sup>3</sup> Certainly steps will be necessary to hand off retained clients to ensure they are not abandoned and that trust accounts are appropriately dealt with. The State Bar can be contacted for guidance on handling retained clients and closing that part of your practice.

which point you would like to start accepting fewer cases and how gradual or steep you want the tapering off to be.

Another possible outcome of mapping your timeline to retirement is that you find it is further out than you had hoped. To speed up your timeline, you have a couple options. Concurrent with taking no new cases, you might increase the number of hours you spend on your current cases each week. Strive to file your briefs without requesting any EOTs, file any petitions for review at the 31st day instead of the 40th, etc. Another way to reduce your timeline to retirement is if you have regularly done oral arguments for most of your cases, scale back to just a few select cases. This, in theory, should shorten the time to the opinion issuing. These are just a few examples for speeding up your timeline to retirement. As you assess the dynamic of your practice, you will likely find others.

*Project Perspective:*

As a courtesy to CCAP, please inform us of your retirement plan or end date; contact the Panel Administrator.

The courts expect appointed counsel to fulfil all appointed case work prior to retirement. A substitution of counsel request for these cases will likely be denied absent extraordinary circumstances for leaving the case.

## **2. Managing Practice-Related Contracts**

Mapping out a timeline to retirement not only informs you of when you might retire, but also provides a fixed point against which to manage the renewal of practice-related contracts. Examples of such contracts include office space leases, Westlaw/LexisNexis contracts, telephone contracts, domain name rental, website hosting, private or post office mail box rental, etc. These renewal dates should be added to your timeline.

You may decide to extend some contracts, such as those for business email, website, and/or business telephone so that you can provide notice of your retirement, as well as how to contact you regarding a closed case. Consider letting these outgoing messages run for several months after you have closed your practice. If you have a website, you might consider reducing it to one page, which is enough to inform those visiting your site of your retirement and their options.

Also, the California State Bar requires a current mailing address be maintained with them. This address will be available to the public on the Attorney Search section of the State Bar's website. Consider whether using a private or post office box rental might be necessary for this purpose in your retirement years. (See the section on "Winding Down," below for more tips on notifying the State Bar.)

For any practice-related contract that will extend beyond the close of your practice, you may need to negotiate an early termination. Another option is to see if you can switch to month-to-month at the final renewal date.

Also, be aware of practice-related contracts that are tied to your credit card and renew automatically.

If you have malpractice insurance, check with your carrier about obtaining “tail insurance” coverage. This covers you for malpractice claims that arise after you stop practicing law but which arise from when you were still active. Tail insurance is typically cheaper than regular malpractice insurance. Check to see whether tail insurance is included as part of your policy, or whether you need to purchase a separate policy for a set term.

### **3. Handling Business Records and Case/Client Files**

Lawyers’ records can be classified into two categories: business records and case/client files. Business records are typically subject to federal and state laws regarding how long they must be retained. Case/client files are, for the most part, governed by ethics opinions issued by the California State Bar and local bar associations.

#### **a. Business Records**

Business records include those records that establish the income earned from your law practice, as well as document any expenses you have incurred. You should retain these records for as long as necessary to prove the income or deductions you claim on your tax returns. Some business records must be kept for a minimum of seven years. The safest way to determine how long you must hold onto various business records upon your retirement is to contact a CPA or other tax professional for advice.

#### **b. Case/Client Files**

After practicing law as a solo for potentially decades, a retiring attorney is likely to have boxes and boxes of closed case/client files. This section covers what constitutes a case/client file and what to do with them.

##### **i. Definition**

State Bar of California Formal Opinion No. 1994-134 provides a robust definition of a “client’s file.” In footnote 1, the opinion states that:

The concept of a “client file” is not static, and its content will change depending upon circumstances. Certainly, all materials delivered by the client for use on behalf of the client belong to the client, unless the client intends otherwise. The Committee notes that the attorney’s ethical responsibilities do not turn on the physical contents of the client’s “case file,” but rather on the ethical obligation on withdrawal to act reasonably to avoid reasonably foreseeable prejudice to his or her former client. (See Bar Assoc. of S.F. Formal Opn. No. 1990-1 [duty to disclose *information*, not necessarily just tangible materials].) (Emphasis added.)

Other opinions have also considered the possible contents of the client file:

1. Pleadings and other papers filed with the court which become part of the public record (see San Diego Cty. Bar Formal Opn. No. 1977-3);
2. Letters to the client, to opposing counsel, and to witnesses or third parties, and letters to the attorney from such individuals (see San Diego Cty. Bar Formal Opn. No. 1977-3 and Bar Assoc. of S.F. Formal Opn. No. 1984-1);
3. Investigative and research reports (both legal and factual) prepared by the attorney or at the attorney's direction (see San Diego Cty. Bar Formal Opn. No. 1977-3 and Bar Assoc. of S.F. Formal Opn. No. 1984-1); and
4. Discovery, reports, research notes, notes regarding witnesses, strategy and tactics, and similar items generated in the course of the representation. (See Bar Assoc. of S.F. Formal Opn. No. 1984-1.)

For a discussion of whether the attorney's "work product" is part of the "file," please see Code of Civil Procedure section 2018 (f)<sup>4</sup>, Bar Association of San Francisco Formal Opinion Number 1990-1, and Los Angeles County Bar Formal Opinion Numbers 330, 362 and 405. An attorney's billing materials are not part of the file. (See Bar Assoc. of S.F. Formal Opn. No. 1984-1.)

We also note that, for purposes of this opinion, whatever the definition of the term "file," it does not include documents or information which the attorney is prohibited by statute or court order from sharing with the client. Examples of such information include the address or telephone number of a victim or witness in a criminal case (see Pen. Code, § 1054.2 prohibiting such disclosure unless permitted by the court), and documents or information governed by protective orders in patent, trade secrets, or product liability cases. These materials cannot be shared with the client until the attorney has obtained the permission of the court to do so.

(State Bar of Cal. Formal Opn. No. 1994-134, fn. 1.)

The full opinion can be found at:

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/1994-134.htm>

An attorney's work product is distinguished from the other contents of a case or client file. Code of Civil Procedure section 2018.030 states that:

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<sup>4</sup> This code section has been repealed. The new code section is Code of Civil Procedure section 2018.030.

- (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
- (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

## ii. Retention

If you do criminal appeals, the short answer to the question, "How long must an attorney keep client files?" is, "A very long time." If you do dependency or juvenile appeals, the answer is "Not as long as criminal appeals, but still a pretty long time."

The subject of retaining criminal files is briefly discussed in State Bar of California Formal Opinion No. 2001-157:

"Formal Opinion No. 420 (1983) of the Los Angeles County Bar Association Committee on Legal Ethics points out:

'Files relating to criminal matters may well have future vitality even after judgment, sentence and statutory appeals have concluded. In criminal matters, the attorney cannot foresee the future utility of information contained in the file. The Committee concludes, therefore, that it is incumbent on the attorney in a criminal matter to obtain some specific written instruction from the client authorizing the destruction of the file. Absent such written instruction, the attorney should not undertake the destruction of client files on the attorney's initiative.'

"Recent adoption of measures such as California's "Three Strikes" law (Proposition 184 of 1994, codified as Penal Code section 1170.12) could make a client file in a matter resulting a prior conviction more important than ever. The Committee concludes that client files in criminal matters should not be destroyed without the former client's express consent while the former client is alive."

The full opinion can be found at:

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/2001-157.htm>

The CCAP website includes a robust discussion about client file retention at:

[http://www.capcentral.org/procedures/client\\_matters/retain\\_file.asp](http://www.capcentral.org/procedures/client_matters/retain_file.asp).

#### 4. Winding Down

##### a. State Bar Status: Switching to Permanent Inactive

According to the State Bar website, “transferring [from active] to inactive status is a serious step requiring the completion of a specific form available online at [www.calbar.ca.gov](http://www.calbar.ca.gov).” An attorney will be billed “active” fees until the application is *received* by the State Bar. Also, the State Bar requires a current mailing address be maintained with them. This address will be available to the public on the Attorney Search section of the State Bar’s website. Consider whether a private or post office box rental might be necessary for this purpose. Also, continued use of “Attorney-at-Law” may be considered active advertising. (Sections 6126 and 6127 of the State Bar Act.)

Annual membership fees for inactive membership for members under age 70 were \$183.00 as of 2020. (State Bar Rule 2.11, Appendix A.) Annual penalties for late payments also apply. Failure to pay inactive fees will result in suspension of the member’s license which is permanently recorded on the member’s public record. Although the “suspension” note on the record cannot be removed, catching up on back payments, including all late fees, can reinstate the member in good standing with the State Bar. A better option may be to timely pay the inactive fees until age 70 just in case you change your mind before that benchmark. Currently, inactive fees are waived for members upon reaching age 70.

A final option is to “resign” from the practice of law with no annual fees assessed. ***However, once you resign, and should you change your mind, core fees and passing a bar exam (similar to the entrance bar exam) are required to reinstate your license!*** The State Bar recommends that members seriously consider these consequences and alternative options available before choosing to resign.

For more information, go to the California State Bar website for a discussion of active versus inactive status at:

<https://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements/Inactive-or-Not-Eligible-Status>

##### b. Et cetera: All the Other Stuff

Other final actions you should undertake as you near your retirement date may include closing any bank accounts related to your law practice, submitting any final claims, canceling any local bar association memberships, following up with your insurance carrier if any, setting up a call-forwarding phone number (either to your home number or to a lawyer who is helping you close your office), addressing any unresolved matter, etc. After that, the only thing left to do is enjoy the next chapter in your life.

#### B. Unplanned Permanent: Incapacity; Death

A subject that we all like to avoid is our own mortality. However, the possibility that you may become incapacitated or die before you are ready to retire your active practice is

unfortunately a possibility that you should plan for – so let’s call this situation, “What if I get hit by a Mack truck?” Once again, the answer is to have an action plan ready to assist those who must step in if such an event should occur.

The dynamic of one’s law practice will dictate how complex this worst-case scenario planning needs to be. At one end of the spectrum is a law practice that is 100% appointed appeals. This type of practice will be easier to attend to than a practice at the other end of the spectrum, such as one that involves a fair amount of retained work, most of which is at the trial level. Such a practice will require more attention to reconciling accounts, dealing with the demands of active trial matters, etc. This section provides a starting point for putting a plan in place for only the appointed cases. The goal—at least as to these cases—is to spare the non-lawyer family member or friend—a first responder if you will—from the chaos and confusion that would result from that person trying to close down your law practice without any preplanning guidance from you.

Note that much of the information covered in the section on an unplanned temporary withdrawal from your practice due to illness and injury is applicable here. As such, this section can be viewed as part two of the office procedures manual that section discussed. The biggest difference between the two discussions is that temporary disability contemplates your return to your law practice. This discussion does not.

## **1. Ethical Considerations**

Your duty to your clients continues despite your death or incapacity. Your top priority, even after death, is to look out for your clients’ interests. Thus one of the goals of worst-case scenario planning is to protect one’s clients. Family members may not comprehend the potential mess their loved one has left behind where the solo practitioner has made no effort to put a plan in place that protects their clients’ interests. The danger of not leaving a plan is that it is possible that no one will do anything related to your clients or practice for days or weeks. This period of inattentiveness to your practice increases the likelihood that critical deadlines will be missed, resulting in serious and potentially irreparable harm to a client.

## **2. Protecting the Lawyer’s Estate**

Another goal of putting a worst-case scenario plan in place is to protect the incapacitated or deceased lawyer’s estate from malpractice. If your practice is criminal-focused, the likelihood of such a claim being successful—and thus wiping out your estate—is remote. This is because “in a criminal malpractice action actual innocence is a necessary element of the plaintiff’s cause of action.” (*Wiley v. County of San Diego* (1998) 19 Cal.4th 532, 545.) The statute of limitations for a criminal malpractice suit is “within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case.” (Code Civ. Proc., § 340.6.) However, none of this prevents a client from initiating a lawsuit and your estate incurring defending legal costs prior to the dismissal of that suit should it be found baseless. To address this possibility, as part of your planning, you should assess the risk to your estate and your own risk tolerance. Depending on where you net out in that assessment, you might consider legal

malpractice “tail” insurance, which extends your malpractice coverage after your policy’s end date.

### **3. Keeping Your Office Organized**

An easy way to lessen the burden on the family member or friend who steps in, should you unexpectedly die or become permanently incapacitated while actively engaged in your law practice, is to keep your office organized. While this certainly applies to any of the temporary or permanent disengagements from your practice discussed in this article, it is especially critical here. In the three other scenarios (vacation, temporary illness or injury, and retirement) you are at least in theory available for guidance. In the current scenario where the Mack truck has wiped you out, you aren’t around to answer questions, find an elusive file, etc. Thus, an organized office will make it easier for whomever is trying to make sense of your office to do so.

Here are some thoughts on keeping your office organized:

- Make sure your office procedures manual is current and locatable.
- Record all deadlines and follow-up dates on your calendaring system.
- Have an up-to-date list of open cases, including case numbers and the responsible project for appointed case matters.
- Keep client files well-documented and up-to-date.
- When a case closes, promptly remove any extraneous paperwork from the file; scan what remains if that is your practice.
- Move closed paper files to storage to avoid confusion; alternatively file them separately from your active cases and make sure they are readily identifiable as closed.
- Maintain current, accurate accounting records.
- Timely submit your claims to the projects/billing to clients to ensure you (or your estate) are paid for your completed work.
- Keep current on the recording of your income and expenses to smoothly facilitate the filing of your taxes.
- Keep your practice bank accounts reconciled, especially your Trust Account if you have one.

### **4. Documenting Important Information**

See Section III(B)(2) “Putting It in Writing” and the discussion about the office procedures manual.

### **5. Managing Client Files**

See Section IV(A)(3)(b) “Case/Client Files” and the discussion about case/client files.

### **6. The Surrogate Attorney**

First, you may consider having in place an “Agreement to Close Law Practice in the Future.” Such surrogacy agreements were approved by the State Bar Board of Governors in

2010. (See <http://www.calbarjournal.com/October2010/TopHeadlines/TH5.aspx>.) Even if you do not have such in place, you should develop written instructions for those who will likely come in to close up your office practice. Generally, the executor or administrator of the attorney's estate is responsible for notifying clients and returning their files. In those unfortunate instances when an attorney dies leaving no responsible person in charge of the law practice, the State Bar or local county bar associations may provide assistance in closing down the law practice after obtaining authorization from the superior court. The superior court may appoint a practice administrator to handle these duties. Your clients may be directed to the State Bar website frequently asked questions. (See <http://www.calbar.ca.gov/Public/Search-FAQ?QuestionID=52&AFMID=3873> "What happens to my files if my attorney dies?")

However, those who are stepping in to handle your affairs need to be aware that the active cases you are handling under appointment by either the Court of Appeal or the California Supreme Court will need to have a new panel attorney appointed on the case. Your law partner or surrogate cannot simply take over the case without an appointment by the court which first appointed you. In addition, there may be outstanding claims owing on work you performed on the case before your incapacitation or death that can be filed on your behalf or your estate. Finally, they need to know how to deal with the storage of the cases where your appointment has ended and how to deal with the inquiries that may come from these appellants.

**a. Appointed Cases – the Project Becomes Responsible for Requesting Substitution of Counsel**

When an attorney who is actively engaged in the practice of law unexpectedly dies or becomes permanently incapacitated, make certain that it is clear in your instructions that the estate administrator or family member should contact the responsible project for each appointed case.

*Project Perspective:*

Here are some steps that can ease the transfer of these cases and ensure that the estate is compensated for your completed work:

- (1) Contact the responsible project for each appointed case. For CCAP, ask for the Panel Administrator;
- (2) Prepare a written notice, which includes the following if you have died:
  - a. certified copy of the death certificate;
  - b. certified copy of the "Letters of Testamentary" or "Letters of Administration"; and/or
  - c. any applicable probate papers (such as a non-probate affidavit under Probate Code section 13101) and declarations, identifying the surviving beneficiaries of the estate.

Note: If you were handling cases out of more than one project when you die, the projects will coordinate with each other. Your representative will only need to send the documents to the project taking the lead, usually the "home" project.

(3) If you are incapacitated such that you cannot continue with the case, a declaration from those assisting you or from the medical provider will be helpful. The project however may decide to simply prepare a declaration to the court based on the information they were provided by you or your representative.

(4) You may want to have a list readily available as to each project's phone number and address and how they can identify which cases are under the administration of which project. For instance:

- a. FDAP (Handles First District Court of Appeal cases. The case numbers all begin with the letter "A".)
- b. CAP-LA (Handles Second District Court of Appeal cases. Those numbers all begin with the letter "B".)
- c. CCAP (Handles the Third and First Districts Court of Appeal cases. Those numbers begin with the letters "C" and "F" respectively.)
- d. ADI (Handles the Fourth District Court of Appeal cases which has three divisions: Division 1, 2, and 3. Those numbers begin with the letters "D", "E", and "G", respectively.)
- e. SDAP (Handles the Sixth District Court of Appeal cases. Those case numbers all begin with the letter "H".)

(5) You will also want to give instructions that if the case is an appointed California Supreme Court case (those cases which begin with the letter "S") they should look to the Court of Appeal number associated with the case to know which project to contact.

(6) Although the projects are the best source to contact to provide assistance to those who will be handling these matters, it would also be prudent to let them know that the Judicial Council of California (JCC) may be an alternative contact for assistance and

direction.

(7) On closed cases, if you have retained transcripts for your clients upon their request, your representative may wish to contact the State Bar for assistance on how to proceed if you do not have a formal agreement in place as discussed above and how to locate and correspond with the previous appellants.

(8) Once the project is notified, the project will find new counsel to handle the case and prepare the appropriate recommendation to the Court of Appeal for substitution of counsel.

(9) Leave instructions as to where your appointed case files are located, where you store the transcripts, your case notes, and any other place where your work product may be found. Include in these instructions where you receive mail on these appointed cases if you have various mail addresses, including e-mail addresses that should be checked. Also, where to find your timekeeping and expense records for your active cases. This will greatly assist your estate in collecting amounts due to you and will assist the projects in providing assistance to your estate in preparing the compensation claim.

(10) When the project is contacted, they will advise your representative where to send these files or any portion of these files or whether to retain them. Please advise them to send items by a mail system that will track the delivery of the item, such as UPS. Advise them to keep a record of the expense and tracking as it can also be claimed as part of the expense in the handling of the case should a claim be submitted.

(11) Leave instructions on how to proceed so that you or your estate/beneficiaries will be paid for services you rendered on these cases where no final claim had yet been submitted. Your representative may prepare the billing for you if they are able to do so. The project may be able to assist.

a. In the case of incapacitation, an attorney unable to sign a claim form may have the option of using an "X" mark or a signature stamp on claims by prior arrangement with JCC.

b. The JCC will require a physician's letter on file with them to support the medical reason for the inability to sign the claims.

c. In the case of death of a panel attorney, final claims can be filed on behalf of the panel attorney's estate. The JCC will require the above certified documents to be on file with them.

d. If the decedent's representative is unable to prepare the final claim on open cases or asks for project assistance in preparing the claim, the project may, with approval from JCC, prepare and file the claim on behalf of the decedent for reasonable payment of the work completed.

e. Once the decedent's claim is approved and processed, JCC will pay the claim(s) in a manner to ensure that the payment is received by the beneficiaries.

(1) Unless otherwise instructed by JCC, the recipient of the payment should endorse the check or warrant as follows:

i. Where the payee is the executor:  
(Name of th Executor) Executor of the Last Will and Testament of (Name of Decedent) Deceased.)

ii. Where the payee is the administrator: (Name of Administrator) Administrator of the Estate of (Name of Decedent) Deceased.

f. It is our current understanding that should there be no survivor or estate, the claims(s) will still be processed and the compensation returned to the State as unclaimed.

## **7. Additional Resources**

### **a. Practitioner Checklist**

The State Bar provides a Practitioner Checklist on its website, the purpose of which "is to aid the practitioner found in the position of having to come in and take over, sell or wind down the law practice of a disabled or deceased practitioner." The Practitioner Checklist can be found at:

<https://calawyers.org/section/trusts-and-estates/publications/practitioner-checklist/>

### **b. Senior Lawyers Resources**

The State Bar website contains a section called Senior Lawyers Resources. Per the webpage, the "Senior Lawyers Ethics Resources page is a collection of resources addressing attorney professional responsibility issues that arise in connection with retirement, disability, and

death of attorneys. The resources include rules, advisory ethics opinions, articles, publications, and MCLE programs.” The Senior Lawyers Resources can be found at:

<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Senior-Lawyers-Resources>

**c. Surrogate Attorney Agreement**

Per the State Bar website: “The State Bar Attorney Surrogacy program provides a model agreement for the designation of an attorney to administer a lawyer’s law practice in the event that the lawyer becomes disabled or incapacitated. The agreement details the typical responsibilities of the lawyers involved in an “Agreement to Close Law Practice in the Future” and is intended to facilitate compliance with Business and Professions Code Section 6185 and relevant provisions of the Probate Code.”

A sample surrogate attorney agreement can be found on the State Bar website at:

[https://www.calbar.ca.gov/Portals/0/documents/forms/AGREEMENT\\_TO\\_CLOSE\\_LAW\\_PRACTICE\\_IN\\_THE\\_FUTURE\\_REVISED\\_08-1-2011.pdf](https://www.calbar.ca.gov/Portals/0/documents/forms/AGREEMENT_TO_CLOSE_LAW_PRACTICE_IN_THE_FUTURE_REVISED_08-1-2011.pdf)

The State Bar’s attorney surrogacy webpage can be found at:

<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Senior-Lawyers-Resources/Attorney-Surrogacy>

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