

YOUR GUIDE TO

SUCCESSION PLANNING

SBM STATE BAR OF MICHIGAN

ACKNOWLEDGMENT

This guide was originally adapted from the *Succession Planning Guide for Iowa Lawyers* published by the Iowa State Bar Association and from the Oregon State Bar Professional Liability Fund handbook titled *Planning Ahead: A Guide to Protecting Your Clients; Interests in the Event of Your Disability or Death*.

DISCLAIMER

This handbook is designed to help lawyers protect their interests, their clients' interests, and their families in the event of the inability to practice law, specifically their inability to practice reasons laid out in MCR 9.301(A). The material presented here does not establish, report, or create the standard of care for attorneys and is not a complete analysis of the topic. Rather, it is intended to provide guidelines and materials to help a private practicing lawyer to create the plan for their firm. The information and materials should not be relied on without first conducting appropriate legal research.

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INTRODUCTION

The Michigan Supreme Court enacted an [order](#) requiring private practice attorneys in Michigan to designate an **Interim Administrator** and name a **Person With Knowledge** to assist in the event the private practice attorney is unable to practice law. This guide is intended to assist private practicing lawyers in Michigan in implementing compliance with these rules while preparing their practice for a temporary or permanent inability to practice.

Additional planning above and beyond the disclosures required by the rules is not only practical for professional reasons but for personal reasons as well. The better a private practicing attorney plans today, and continues to update, the better prepared family, friends, and practice will be.

The primary focus of this guide is solo practitioners and small firms; however, any firm may also use the information in this guide to ease the transition of the practice when an attorney member of the firms becomes unable to practice law due to death, disability, or other reason.

TERMINOLOGY

MCR Chapter 9.300 refers to "Private Practice Attorney", "Affected Attorney", "Interim Administrator", and "Designated Interim administrator". To reduce confusion, the same terms are used in this guide.

Private Practice Attorney means an active Michigan attorney in good standing who represents one or more clients for whom they provide legal services that require a Michigan law license. This includes lawyers in law firms, regardless of the size of the firm, and not only solo practitioners.

Affected Attorney means a private practice attorney who is either temporarily or permanently unable to practice law as defined in MCR 9.301(A).

Interim Administrator means an active Michigan attorney in good standing or a law firm with at least one other active Michigan attorney in good standing, other than the private practice attorney, who is designated to serve on behalf of the private practice attorney if the private practice attorney is unable to practice law. This may also be a State Bar of Michigan (SBM) staffer through the SBM's Interim Administrator Program

Designated Interim Administrator means an Interim Administrator that a private practice attorney has chosen to serve as their interim administrator and the interim administrator has accepted the designation.

MANDATORY REQUIREMENTS:

The mandatory requirements are discussed in detail at our [Rule 21 page](#). Rule 21 requires all active private practice attorneys in Michigan as part of their 2023-2024 license renewal to:

1. **Name a person with knowledge of their practice**
2. **Designate an interim administrator**

– OR –

Enroll in the State Bar of Michigan Interim Administrator Program

OPTIONAL PLANNING:

The [Succession Planning Page](#) has optional Interim Administrator Planning resources available for private practicing attorneys to use to create a more robust plan. Although not required by Rule 21, these additional resources may be useful and help the interim administrator in completing their duties effectively and efficiently.

CLIENT NOTIFICATION

Once a private practicing lawyer has designated their Interim Administrator and named their Person With Knowledge, the lawyer should provide notice to their clients that a designation has been made. The easiest way to do this may be to include information regarding the designation requirement in fee agreements, engagement letters, and firm brochure. The notice should explain the requirement and nature of the designation and compliance. Sample fee agreement language is provided [here](#).

PREPARING YOUR PRACTICE

Much of the confusion and expense involved after a lawyer's inability to practice can be minimized by prior planning and disciplined conduct of the practice. Recommended tasks in organization and operation of the practice are included in the [Law Office List of Contacts and Preparing Law Practice to Protect Your Clients' Interests in the Event of Your Inability to Practice](#). Taking the time to plan now, will save a lawyer's firm, staff, family, and designated interim administrator the time and cost of attempting to create knowledge that a lawyer had prior to their inability to practice.

HANDLING CLIENT FILES

One of the most troublesome issues upon a lawyer's inability to practice due to death permanent disability, or other reason is the disposition of client files. Proper handling of these files may consume substantial time and expense on the part of the designated interim administrator absent preparation by the private practice attorney. Preparing and continuing to update the file retention plan is imperative. [See also file retention](#).

ETHICAL CONSIDERATIONS

Protecting the public is one of the primary goals of the legal profession. When a lawyer is unable to practice due to disability, discipline, disappearance, death, or other reason, the attorney must have ensured that their clients' interests are protected, even if the attorney can no longer represent their clients.

Succession planning is an essential step to every lawyer's practice. This step proactively protects a lawyer's clients and colleagues in the event of the lawyer's inability to practice. State Bar Rule 21 and Chapter 9.300 of the Michigan Court Rules requires a private practice lawyer to designate an interim administrator and name a person with knowledge. Specifically, Rule 21(A) provides:

An attorney in private practice must designate an Interim Administrator to protect clients by temporarily managing the attorney's practice if the attorney becomes unexpectedly unable to practice law as set forth in MCR 9.301 and pursuant to Rule 2(B) of the Rules Concerning the State Bar of Michigan. [The Supreme Court Order may be found [here](#).]

While this is the legal requirement for interim administrator planning, there is an ethical obligation to complete a succession plan as analyzed in Ethics Opinion [RI-374](#), which states

Michigan lawyers are strongly encouraged to prepare a comprehensive succession plan specific for their law practices to protect their clients and fulfill their ethical responsibilities under the MRPC should they become unavailable due to death, disability, discipline, disappearance, or any other circumstance.

Attorneys must plan for the eventual time they are no longer able to practice, not only for their families and their own interests, but for their clients as well. The mandatory requirement to designate an interim administrator and name a person with knowledge is a crucial step, but additional planning will assist the interim administrator in effectively completing their duties and handling the nuances contained therein, including but not limited to, handling the practice's IOLTAs, client files, and protecting an attorney's interests.

Usually, the first task is to provide notice to the existing clients of the inability of the attorney to continue practicing. See MRPC 1.16(d). Courts should also be given notice of the attorney's inability to practice, and a substitution of counsel is presented to the court when substitute counsel is found. See MCR 2.117(B).

Ethics opinion [RI-100](#) provides guidance to winding up a law practice and although that is not a duty of an interim administrator provided in the court rules, it may be one that is agreed upon with the designated interim administrator and the private practicing attorney who made the nomination. It outlines various suggestions such as:

- Assisting the client in obtaining new competent legal representation.

- Protecting confidences and secrets of the clients.
- Fulfilling the lawyer's fiduciary duties regarding safekeeping client property.
- Satisfying the lawyer's record-keeping obligations.

The interim administrator must prioritize the open files and determine court dates and other time-sensitive issues, such as the statute of limitations. These files should be immediately referred to new counsel for further action, if the interim administrator is chosen to be the new counsel by the client then the interim administrator *must* obtain informed written consent from said client and that consent *must* contain an acknowledgment that the client understands they do not have to choose the interim administrator as their attorney.¹ Any closed files should follow the practice's file retention plan (see ethics opinion [R-005](#)). If the practice did not establish a record retention policy, the interim administrator may need to draft one and provide the appropriate notices to former clients. Additional information regarding record retention may be found in the SBM's [Record Retention Kit](#). The circuit court that appoints and interim administrator has jurisdiction over all affected attorney's files, records, and property, and may enter appropriate orders to protect the interests of the affected clients.²

Other important aspects in a lawyer's practice are trust accounts, or IOLTAs (Interest on Lawyer Trust Accounts), and operating accounts. Attorneys have access to their own practice's trust accounts, but depending on the reason for their inability to practice they may not be able to access the accounts. MRPC 1.15 requires that unearned fees, unspent costs, and other funds held for safekeeping must be deposited and retained in a lawyer trust account and clients must have access to funds held by the lawyer for safekeeping, delaying access to these funds may hinder or delay a client from hiring a new attorney, placing the client in a difficult, and likely, untenable position. This delay may result in disciplinary action complaints, malpractice complaints, civil suits, or other such claims. However, allowing access to a trust account must be accomplished with the utmost care as any misappropriation of funds will place clients in dire straits. Each attorney must weigh all available options, such as limited durable power of attorneys and interim administrator agreements, the potential risks of each option, and make the best choices they deem appropriate for their practice and their clients. Any options should be investigated further to ensure your financial institution will accept the documentation.

Opinions that should be reviewed when drafting a succession plan are as follows:

Closing a Law Practice:

- [R-5](#)
- [R-12](#)
- [R-19](#)
- [RI-30](#)
- [RI-38](#)
- [RI-69](#)
- [RI-100](#)
- [RI-102](#)
- [RI-110](#)
- [RI-374](#)

Record Retention:

- [R-5](#)
- [R-7](#)
- [R-12](#)
- [RI-86](#)
- [RI-100](#)
- [RI-109](#)
- [RI-178](#)
- [RI-240](#)

Trust Accounts:

- [R-7](#)
- [RI-38](#)
- [RI-58](#)
- [RI-61](#)
- [RI-64](#)
- [RI-65](#)
- [RI-67](#)
- [RI-69](#)
- [RI-70](#)
- [RI-71](#)
- [RI-92](#)
- [RI-93](#)
- [RI-102](#)
- [RI-189](#)
- [RI-222](#)
- [RI-224](#)
- [RI-329](#)

Client Files:

- [R-19](#)

Ethics opinions may be found at <https://www.michbar.org/opinions/ethicsopinions>.

1. MCR 9.317
2. MCR 9.311

FILE RETENTION

Lawyers who maintain legal files are ethically required to have a file retention policy.³ Creating a policy has many facets as there is no specific file retention period in the Michigan Rules of Professional Conduct (MRPC). Further, policies should be customized to address the specific needs of each law firm and its clients.

Lawyers who need to create a file retention plan should refer to the State Bar of Michigan's [Record Retention Kit](#). Attorneys are strongly encouraged to review [Ethics Opinion R-5](#) to review minimum policies that an attorney's or firm's office should include within their record retention policy. Attorneys should also contact their malpractice insurance carrier for additional guidance on the attorney's or firm's policy and review case types to determine length of retention.

PREPARING YOUR PERSONAL ESTATE PLAN

A private practitioner will want to maintain a current estate plan that designated a fiduciary and alternates. The estate plan should also refer to the attorney's optional interim administrator planning documents.

Michigan law gives broad powers to a personal representative and a trustee to sell or wind down a business, and to hire professionals to help administer the estate.⁴ However, for the fiduciary's protection, a lawyer may want to include language in their estate plan that expressly authorizes the personal representative or trustee to enter into an agreement with an attorney to act as interim administrator if the previous choice designated as interim administrator is no longer able or willing to act.

COMPENSATING YOUR INTERIM ADMINISTRATOR

The private practice attorney should consider the likely cash flow situation of the practice upon the lawyer's inability to practice. If the remainder of the property (other than the practice) is likely to pass to spouse or other family members, the practice might be placed in a cash-poor situation. Cash flow needs of the practice for routine expenses and compensation of staff likely will continue for some period after the inability to practice occurs. A lawyer may want to consider disability insurance and a specific policy of insurance on their life as sources for interim capital to wind up their practice in the event of disability or death.

Entering into an [Interim Administrator Planning Agreement](#) with the designated interim administrator may indirectly assist with the issue of compensation. If the designated interim administrator will have the opportunity to become successor counsel for those clients who consent after notice, he or she may be willing to serve with no or reduced compensation.

IF YOU ARE A MEMBER OF A FIRM

Issues in practice administration appear to occur less frequently with respect to attorneys who practice as a member or employee of a firm. However, a firm also can plan to ease transition of the practice when an attorney member or employee becomes disabled or dies. The provisions of Rule 21 accordingly require all private practitioners to make the same designations as sole practitioners. If a private practice attorney is a member of a law firm that includes other Michigan attorney(s) in good standing, the private practice attorney may simply designate his or her own firm.⁵

The law firm organizational document is an appropriate place to include provisions relating to the death or disability of attorney members of the firm.

One possible topic for the firm organizational document is a list of duties of all attorney members of the firm during routine practice, with the goal of maintaining a well-organized practice that is amenable to transition. The list of duties might include many of the topics included in the checklist [Preparing Law Practice to Protect Your Clients' Interest in the Event of Your Inability to Practice](#).

Other possible topics for the firm organizational document are law firm authority and duties after the death or disability of an attorney member of the firm.

The firm also may want to consider formalizing designated interim administrator or practice group arrangements, wherein attorneys working in similar areas maintain some level of familiarity with the matters assigned to another attorney or other attorneys in the group.

3. See Ethics Opinion [R-5](#).

4. MCL § 700.3715 and MCL § 700.7817

5. MCR 9.303