

# **ATTORNEYS TO PROTECT CLIENTS' INTERESTS IN SOUTH CAROLINA**

A Manual to Assist Attorneys  
Appointed by the  
South Carolina Supreme Court

Version 3.0 – April, 2004

This SC Bar publication is intended to provide current and accurate information about the subject matter covered and is designed to assist attorneys appointed by the South Carolina Supreme Court to act as Attorneys to Protect Clients' Interests in carrying out their duties. This publication is distributed with the understanding that the attorneys contributing to this publication and the SC Bar do not render any legal, accounting or other professional service to the attorneys utilizing this publication. Attorneys using this publication to assist them in carrying out their duties should also research original sources of authority.

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## ACKNOWLEDGMENTS

This publication was originally prepared by a subcommittee of the SC Bar's committee on Professional Responsibility consisting of Karl A. Folkens, William K. Witherspoon, Charles L. Henshaw, Jr., Carl R. Reasonover, E. Paul Gibson, Kenneth C. Krawcheck, and Michael J. Howell, Chair, and was later revised by a second subcommittee consisting of Roy F. Laney, Michael J. Howell, and Jason B. Buffkin, Chair.

The most recent version of this manual in Adobe Acrobat Reader (pdf) format is available from the SC Bar website: <http://www.sctbar.org>. Word processing formats (WordPerfect and M/S Word) also are available and may be useful in easily adapting forms for your use.

## INTRODUCTION

How does the judicial system respond to clients when their lawyer is transferred to incapacity inactive status, is suspended, disbarred, disappears, or dies? The answer is simple: an attorney is often appointed by Order of the South Carolina Supreme Court as an Attorney to Protect Clients Interests (often referred to as a "trustee").

How does the appointed attorney carry out the duties to the clients and the judicial system? What issues are involved in that process? Those answers are quite complex. The Professional Responsibility Committee of the South Carolina Bar appointed a subcommittee in 1999 to address the issues and challenges facing attorneys when they are appointed to protect clients' interests. The subcommittee members, some of whom have been appointed as Attorneys to Protect Clients' Interests ("APCI"), immediately recognized the dearth of information and guidance available to APCIs in carrying out their duties.

This manual arose from the subcommittee's discussions of the need for a centralized collection of rules, forms and resources to assist APCIs in fulfilling their obligations. An attorney, thrust into the world of lawyer discipline enforcement because "the call" is made and the Order of Appointment issued, may be initially bewildered by the very nature of the appointment. The APCI is asked to immediately step into what is oftentimes a crisis situation. The death of a lawyer may be sudden and unexpected. A lawyer may be the subject of disciplinary action or may be incapable of continuing the practice of law. The lawyer's clients may be shocked, confused, addled, and angry. The APCI must quickly learn what is expected and what course of action must be undertaken.

Each APCI appointment is different. One may handle just a handful of clients because a lawyer was already semi-retired, while another may be faced with handling a practice involving hundreds of clients with no semblance of organization or structure in the midst of probable criminal conduct.

Because every APCI journey is different, this manual is intended to be a road map for that journey - a useful tool in helping reach the destination. This manual will offer suggestions and

guidelines. However, just as the APCI's ultimate authority comes from the South Carolina Supreme Court, the ultimate decision-making as to what course of action to take lies with the APCI.

The APCI's journey can be separated into three phases. Phase 1 deals with understanding the appointment process, securing the clients' files and related matters, and communicating with all interested persons. Phase 2 addresses the handling of the clients' files, coordinating efforts with other attorneys taking over the files, and dealing with financial issues. Phase 3 concludes with an accounting for funds and files, and petitioning the Supreme Court for termination of the appointment.

Throughout the manual, "APCI" will refer to the Attorney to Protect Clients' Interests, "ODC" will refer to the Office of Disciplinary Counsel, and "lawyer" will generally refer to the inactive, suspended, disbarred disappeared or deceased attorney.

## **PHASE 1 -THE INITIAL APPOINTMENT**

The "phone call" has been received. A local lawyer's practice has been interrupted because of death, disability, disappearance or disciplinary action. You've been asked to serve as an attorney to protect the lawyer's clients' interests. You've said "yes." The Order from the Supreme Court will be faxed to you shortly. Now what?! Your first question is, understandably, "why me?"

When a lawyer dies, is disabled and unable to continue practicing law, disappears or has been suspended or disbarred, and "no partner, personal representative or other responsible party capable of conducting the lawyer's affairs is known to exist," the Office of Disciplinary Counsel ("ODC") steps in and files a petition with the Court seeking the appointment of an APCI. The Court gives careful consideration in appointing a lawyer as APCI, to include experience, reputation, type of practice, and availability to immediately assume the duties of an APCI. Such an appointment is indicative of the Court's feeling that the appointee is a "top drawer" lawyer.

Having said "yes" and having received the Order of Appointment, the next step is crucial to your understanding the nature and extent of your obligations:

- Read the Order of Appointment
- Read Rule 31, LDE, Rule 413, SCACR, 3 times.
- Read the Order of Appointment one more time.

This recommendation is not meant to be facetious. Attorneys who have served as APCIs routinely agree that reading and re-reading the Order of Appointment and Rule 31 at the outset did more to resolve questions and conflicts than any other activity. Because the wording of Orders of Appointment may vary, a sample is not reproduced here in order to avoid any confusion or

misunderstanding. Your Order of Appointment is the source of your authority. Its very wording empowers you to act.

Rule 31 is a sub-rule under Rule 413 of the South Carolina Appellate Court Rules involving Lawyer Disciplinary Enforcement. The Rule is your second source of authority and sets forth your general obligations.

**RULE 31. APPOINTMENT OF ATTORNEY TO PROTECT CLIENTS' INTERESTS WHEN LAWYER IS TRANSFERRED TO INCAPACITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS OR DIES**

**(a) Appointment of Attorney.** If a lawyer has been transferred to incapacity inactive status, has disappeared or died, or has been suspended or disbarred, and no partner, personal representative or other responsible party capable of conducting the lawyer's affairs is known to exist, disciplinary counsel shall petition the Supreme Court for an order appointing an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended or disbarred lawyer and to take action as appropriate to protect the interests of the lawyer and the lawyer's clients. The order of appointment shall be public.

**(b) Duties of Appointed Attorney.** The appointed attorney shall:

**(1)** Take custody of the lawyer's files and trust or escrow accounts. An investigative panel may issue such orders as may be necessary to assist the appointed attorney in obtaining custody over such files and accounts, to include orders compelling the lawyer or a third party to take specific action regarding the files and accounts. The willful failure to comply with such an order may be punished as a contempt of the Supreme Court. A party who wishes to challenge such an order must immediately seek review of the order by petition to the Supreme Court.

**(2)** Notify each client in a pending matter, and in the discretion of the appointed attorney, in any other matter, at the client's address shown in the file, by first class mail, of the client's right to obtain any papers, money or other property to which the client is entitled and the time and place at which the papers, money or other property may be obtained, calling attention to any urgency in obtaining the papers, money or other property;

**(3)** Publish, in a newspaper of general circulation in the county or counties in which the lawyer resided or engaged in any substantial practice of law, once a week for three consecutive weeks, notice of the discontinuance or interruption of the lawyer's law practice. The notice shall include the name and address of the lawyer whose practice has been discontinued or interrupted; the time, date and location where clients may pick up their files; and the name, address and telephone number of the appointed attorney. The notice shall also be mailed, by first class mail, to any errors

and omissions insurer or other entity having reason to be informed of the discontinuance or interruption of the law practice;

(4) Release to each client the papers, money or other property to which the client is entitled. Before releasing the property, appointed counsel shall obtain a receipt from the client for the property;

(5) With the consent of the client, file notices, motions or pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; and

(6) Perform any other acts directed in the order of appointment.

(c) **Period of Appointment.** An appointment shall be for a period of no longer than 9 months. Upon application by the appointed attorney, the Supreme Court may extend the period of appointment as necessary.

(d) **Representation of Clients.** Clients should be encouraged to engage other counsel as soon as possible but nothing in this paragraph shall be construed as preventing the appointed attorney from accepting employment by any client of the lawyer.

(e) **Termination of Appointment.** When the provisions of (b) above and the order of appointment have been complied with, the appointed attorney shall apply to the Supreme Court for termination of the appointment. The application shall contain the written releases of clients to whom files and other property were returned, information regarding the efforts made to contact the lawyer's remaining clients, an inventory of the files and other property remaining in the appointed attorney's possession and an itemized account of the expenses incurred in carrying out the order of the Supreme Court appointing the attorney. Upon approval of the application by the Supreme Court, all files and property remaining in the appointed attorney's possession shall be deposited with the Commission. Unless otherwise ordered by the Supreme Court, the files shall be retained by the Commission for a period of 3 years at which time they shall be destroyed in a manner which protects their confidentiality. Other client property remaining in the possession of the Commission after 3 years shall be disposed of in a manner as ordered by the Supreme Court.

(f) **Compensation and Expenses.** With the exception of reasonable and necessary expenses, such as postage, telephone bills, copies, supplies and the cost of publishing legal notice in the newspaper, an appointed attorney shall serve without compensation as a service to the legal profession. However, the Supreme Court may order that the appointed attorney be reimbursed a reasonable amount for other expenses, such as the appointed attorney's time or the time of support staff, when it

determines that extraordinary time and services were necessary for the completion of the required duties or when the appointment has worked a substantial hardship on the appointed attorney's practice. The Supreme Court shall determine the reasonableness of necessary expenses and other expenses.<sup>1</sup> Expenses which are approved and awarded by the Supreme Court shall be paid from funds remaining in the lawyer's accounts. If no such funds exist, payment shall be made from the Lawyers' Fund for Client Protection under Rule 411, SCACR. If the appointed attorney's expenses are paid by the Lawyers' Fund for Client Protection, the Supreme Court may order the lawyer to reimburse that Fund.

**(g) Protection of Client Information.** An appointed attorney shall not be permitted to disclose any information contained in the files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment.

<sup>1</sup> In an effort to balance the need to preserve the Lawyers' Fund for Client Protection with the need to, in certain situations, reimburse attorneys appointed pursuant to Rule 31, RLDE, Rule 413, SCACR, the following rates are currently established for reimbursement of the appointed attorney's fees, support staff costs and the cost of copies, but are subject to change at the discretion of the Court.

|                           |                  |
|---------------------------|------------------|
| Appointed Attorney's Fees | \$50.00 per hour |
| Support Staff             | \$10.00 per hour |
| Copies                    | \$ 0.10 per page |

\*\*Note that you are obligated "to take action as appropriate to protect the interests of the lawyer and the lawyer's clients." Even though your title suggests that YOU are to solely protect the clients' interests, you have an obligation under the Rule to protect the interests of the lawyer. The sub-committee has recommended a clarification and revision of this aspect of Rule 31. Until it is changed, be aware of this dual role.

What if the clients' interests conflict with the lawyers' interests? Especially in lawyer discipline enforcement proceedings, inherent conflicts of interest exist. When such conflicts arise, try to reach a consensus among all interested persons: the lawyer, the client, and the ODC. If consensus can't be reached, make a judgment call and let all parties know your decision. An unpublished Supreme Court Order dated February 19, 1998 states, "In our opinion, the Office of Disciplinary Counsel, rather than this court, is in a better position to supervise the day-to-day activities of appointed attorneys and to initially attempt to resolve disputes between respondents and appointed attorneys." ODC recognizes the importance of timeliness of the work of the APCI and gives calls and requests from them the top priority.

Rule 5(b)(9) LDE, Rule 413, SCACR, has been added to provide that that Disciplinary Counsel has the authority and duty to “provide advice and assistance to attorneys appointed to protect clients’ interests.”

Subsequent to this ruling, Rule 31(b)(1) was amended to include the provision that “an investigative panel may issue such orders as may be necessary to assist the appointed attorney in obtaining custody over such files and accounts, to include orders...” The manner in which this process works is that ODC moves before an Investigative Panel of the Commission on Lawyer Conduct for an Order requiring the lawyer or third party to immediately comply with the APCI’s requests. If compliance is not quickly obtained, ODC moves before the Supreme Court for a Rule to Show Cause.

Also, note that the Order of Appointment is public. Once it has been signed, usually by the Chief Justice, you are free to tell others. Until then, do not discuss the pending appointment with anyone unless you have obtained approval from the ODC. For example, you may want to consult with your law partners to determine if you will have their support and cooperation as you consider accepting the appointment. Although the order is public, unless the lawyer has died, the Order does not usually specify why the lawyer has been suspended and why the APCI has been appointed. In order to assist the APCI in facing what is usually an immediate crisis, the ODC usually does share with the APCI the circumstances of the suspension. This information is confidential and the APCI cannot disclose it to anyone.

Now that you have read the Order several times and Rule 31 several times, take action. Subsection (b)(1) “Duties of Appointed Attorney” states that the appointed attorney shall:

Take custody of the lawyer’s files and trust or escrow accounts. An investigative panel may issue such orders as may be necessary to assist the appointed attorney in obtaining custody over such files and accounts, to include orders compelling the lawyer or a third party to take specific action regarding the files and accounts. The willful failure to comply with such an order may be punished as a contempt of the Supreme Court. A party who wishes to challenge such an order must immediately seek review of the order by petition to the Supreme Court.

In fulfilling this charge, you must first assess the degree of cooperation and assistance you will receive from the lawyer. There is no prohibition against the APCI communicating directly with the suspended lawyer. The APCI is not an adversary and the lawyer has to comply with your requests in your efforts to protect the clients. There may be certain situations where it would be to your advantage to deal with the suspended lawyer through counsel, and hopefully your efforts will be supported by counsel. It is a good idea to initiate contact with counsel.

Go get the files and escrow account records. If you can’t get them all at once, consider securing the premises and ensuring that no one has access to the premises until you have completed your tasks. In extreme cases, some APCIs employ the services of a locksmith to change the locks

until the premises can be released to the lawyer or estate. In deciding whether to take such a course of action, you may want to point out to the lawyer or the lawyer's legal counsel the benefits of locking the office. For instance, concerns about improper meddling with the files by the lawyer after the issuance of the Order of Appointment maybe lessened by your securing the premises. Have at least one other person with you or your designated staff person at all times while you are in the premises.

If you have secured the premises, get in and out as soon as practicable. Remember your objectives and the purpose of your appointment. You are not a "receiver" for the lawyer. You do not want to run the lawyer's practice. You do not want to incur unnecessary expense. You do not want to cause any additional inconvenience to the lawyer. Along with securing the client files and trust/escrow accounts, the APCI may need to take physical possession of computers that contain client information. You may need to download client information before returning the computers to the lawyer. Also, the APCI will need to contact the US Post Office to redirect the mail – street address and post office box. You will receive extra copies of the Order of Appointment which some banking institutions and Postmasters require.

Questions have arisen as to what files the APCI is to take custody of. The answer is all of them – both active and closed. The Court ruled in an unpublished opinion dated October 12, 1999 that, since rule 31(b)(1) RLDE, Rule 413, SCACR does not distinguish between active and closed files, the Rule requires all files to be taken. It is, of course, important to first focus on the active files. You do need, however, to take possession of the old files. In the situation where the lawyer has been practicing for several years, the files will most likely be in a storage facility. The lawyer will need to cooperate with you to exchange keys or whatever else is necessary to make sure you have exclusive access to them. Hopefully, there will be an inventory. Usually there is not one.

When you are prepared to turn over the premises, write the lawyer and the ODC giving the date and time the premises will be turned over. There may be special circumstances necessitating a delay; open and even-handed communication between all interested persons at this stage will avoid misunderstandings and confusion.

The Rule clearly directs you to take custody of the trust and escrow accounts. The Rule is silent as to general operating accounts – if your Order of Appointment does not specifically direct you to take custody of such accounts, you will need to make a judgment call. In certain cases, you may want to take custody of those accounts, especially if allegations of commingling funds have been raised. After all, clients' funds may exist in the general operating account and you have a duty to protect the clients' rights to those proceeds. Be mindful, however, of such actions impairing the lawyer's ability to make important payments, such as payroll tax deposits. You might be able to simply secure records without freezing the funds. Again, if you can't reach a consensus with the interested persons, make a judgment call. Since such action could conceivably have a devastating effect on the lawyer's financial situation, this may be one of those occasions when a Court petition is warranted.

While you are in the process of securing records from the lawyer, contact all banks where the accounts are maintained. A sample letter:

[Letterhead]

May 1, 2004

First American National Bank  
291 West Main Street  
Florence, South Carolina 29501

Re: John Doe

Dear Ladies and Gentlemen:

Last Friday, April 30, 2004, the South Carolina Supreme Court suspended John L. Doe from the practice of law. Attached to this letter is a copy of that Order signed by the Chief Justice

Please note that the Order directs you, as a bank maintaining at least one account belonging to Mr. Doe, to prevent Mr. Doe from making withdrawals from any and all accounts with your bank. You are directed to immediately comply with the Chief Justice's Order and to forward any and all future information concerning any and all such accounts to me at the address set forth above.

I would appreciate your providing me with a current balance on any and all accounts, a list of any and all account numbers, including any Certificates of Deposits or other types of accounts which you may maintain, and, if possible, providing me with interim statements on all such accounts.

If you have any questions regarding your obligations under the Chief Justice's Order, please do not hesitate to contact me.

Yours very truly,

Richard M. Roe  
Attorney to Protect Client's Interest

RMR  
Enclosure

cc: Henry Richardson  
Sally M. Smith, Esq., Attorney for Mr. Doe

In certain cases, you may want to open a new trust account and transfer the account balances to the new account which is solely in your name. This arrangement will assist you in reconciling your account back to this opening balance rather than trying to work with some variable figure in the former account.

Work with a senior bank official to ensure that legitimate checks which have not yet cleared are honored by the bank, while questionable transactions are scrutinized. Opening your separate account at the same bank may expedite the handling of payment of legitimate checks. Use a good accounting program, such as Quicken, to assist you in any bookkeeping or check-writing chore or in reconstructing financial transactions. Subsection (b)(2) "Duties of Appointed Attorney" states that the appointed attorney shall:

Notify each client in a pending matter, and in the discretion of the appointed attorney, in any other matter, at the client's address shown in the file, by first class mail, of the client's right to obtain any papers, money or other property to which the client is entitled and the time and place at which the papers, money or other property may be obtained, calling attention to any urgency in obtaining the papers, money or other property.

A sample letter for notifying clients:

[Letterhead]

May 1, 2004

To: Former clients of John L. Doe

By Order of the South Carolina Supreme Court, John L. Doe has been suspended from the practice of law, and I have been appointed by the Court as the Attorney to Protect Clients' Interests. It is my duty to take custody of Mr. Doe's files and escrow accounts, and notify you of your right to obtain any papers, money or other property to which you are entitled.

You may pick up your file from my office from 10:00 a.m., until 4:00 p.m., Monday through Friday, until at least August 31, 2004, at the address set forth above. I encourage you to call before you come to let us know when you intend to pick up your file so that we can have it ready for you. Any files in my possession at the termination of my appointment will be turned over to the Commission on Lawyer Conduct in Columbia, SC.

Attached to this letter is a sample receipt we will ask you to sign acknowledging your receipt of your file and reminding you of the need to obtain substitute counsel as soon as possible. I urge you to immediately arrange to pick up your file at your earliest convenience since there may be certain deadlines affecting your rights.

Yours very truly,

Richard M. Roe  
Attorney to Protect Client's Interest

RMR  
Enclosure

cc: Henry Richardson  
Sally M. Smith, Esq., Attorney for Mr. Doe

The lawyer may have a separate obligation to notify all clients by certified mail. See Rule 30(a), LDE, Rule 413, SCACR, which provides:

A disbarred or suspended lawyer shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in a pending matter. The notice shall advise the client of the disbarment or suspension and of the consequent inability to act as an attorney. The notice shall also advise the client to seek legal advice of the client's own choice elsewhere and, if the matter involves pending litigation or administrative proceedings, of the desirability of the prompt substitution of another lawyer to act as the client's attorney in the proceedings.

In the past, the suspended lawyer in attempting to fulfill his duties under Rule 30 requiring the lawyer to give notice to the clients has worked with the APCI and done a joint mailing. While a joint mailing by the lawyer under Rule 31 Subsection (b)(3) "Duties of Appointed Attorney" states that the appointed attorney shall:

Publish, in a newspaper of general circulation in the county or counties in which the lawyer resided or engaged in any substantial practice of law, once a week for three consecutive weeks, notice of or interruption of the lawyer's law practice. The notice shall include the name and address of the lawyer whose practice has been discontinued or interrupted; the time, date and location where clients may pick up their files; and the name, address and telephone number of the appointed attorney. The notice shall also be mailed, by first class mail, to any errors and omissions insurer or other entity having reason to be informed of the discontinuance or Interruption of the law practice.

A sample notice for a suspended lawyer.

NOTICE OF THE INTERRUPTION OF  
THE LAW PRACTICE OF JOHN L. DOE

1234 West Main Street  
Columbia, South Carolina 29201  
and  
24 Law Square  
Camden, South Carolina 29020

By Order of the South Carolina Supreme Court, John L. Doe has been suspended from the practice of law, and Richard M. Roe has been appointed by the Court as the Attorney to Protect Clients' Interests.

Clients of John L. Doe and Doe Law Offices, P.C., may pick up their files from the appointed attorney, from 10:00 a.m. until 4:00 p.m., Monday through Friday, at

Roe Law Firm  
4321 West Main Street  
Columbia, South Carolina 29201  
(803) 555-0100

Use common sense in placing the newspaper notice. If you are handling a deceased lawyer's clients and the lawyer had a reliable, organized file management system, you could probably place the notice in the "Legal Notices" section of the newspaper at minimal cost. If you need to reach a large number of persons, and the addresses in the lawyer's file and the file list are unreliable, a formal notice in the news section of the newspaper is probably warranted. Be careful with your choice of words in the public notice. Although the APCI appointment provisions are rarely utilized by the Supreme Court and only when the lawyer's practice will most likely not continue, the lawyer may eventually resume the practice of law. Do not use the term "disbarment" if disbarment has not yet occurred, nor the term "suspension" if the Order does not specifically reference a suspension. Use of the terms "interruption of the lawyer's practice" may avoid misunderstandings and unwarranted embarrassment.

Within a day or two of the issuance of the Order, ODC notifies federal and state courts and other interested parties. The APCI will need to make sure that all courts have the lawyer listed as

attorney of record with pending cases to be notified immediately. The Rule requires that any malpractice carrier also be notified.

Having taken custody of the files and financial accounts and notifying the clients, malpractice carrier, banks and public; of the action taken, you are ready to proceed to Phase 2.

## **PHASE 2 - MANAGING THE FILES AND THE CLIENTS**

Within hours of your appointment you will probably be contacted by clients wanting to know what is going on. Some may be angry, others worried. The first 72 hours of your appointment will be hectic. Expect it!

Except in extraordinary cases in which immediate access to a particular client's file is warranted, tell each inquiring client something to the effect of: "We are in the process of gathering the files and records. We expect to be in a position by Thursday morning at 10:00 a.m. to respond to you. Unless there is something pressing that cannot wait, please contact us then and we will be in a better position to assist you, or leave a number where we can reach you sometime that day."

Chances are that nearly all clients will be content knowing that someone is obviously in charge of things and an orderly process is in place to assist them. Subsection (b)(4) "Duties of Appointed Attorney" states that the appointed attorney shall:

Release to each client the, papers, money or other property to which the client is entitled. Before releasing the property, appointed counsel shall obtain a receipt from the client for the property.

A sample release for each client to sign:

## RECEIPT

The undersigned, being duly sworn, deposes and says:

1. I was a client of John L. Doe.
  
2. I acknowledge receipt this \_\_\_\_ day of \_\_\_\_\_ 2004, of my file which was obtained from John L. Doe's office by Richard M. Roe, Attorney to Protect Clients' Interest, and represented to Mr. Roe to be the entire original case file. I understand that neither Mr. Roe nor Mr. Doe are retaining a copy of this file, and that any successor counsel I may retain will not be able to obtain any file or documentary materials from either of them to assist in the handling of my case.
  
3. I understand that Richard M. Roe has not given me any legal advice. I understand that I need to immediately secure the services of an attorney to resume representation in this matter. I also understand that there may be deadlines affecting my file and I understand the urgency in obtaining the services of another attorney to resume representation.
  
4. I understand that by taking possession of this file, I am accepting the only copy of the file that exists, and that certain documents or items contained therein may be the only copies in existence. I assume full responsibility for insuring the integrity of the file from this date, and I acknowledge that any loss or destruction of all or a portion of the file will be my sole responsibility.
  
5. In the event Mr. Roe obtains any further documents or other information pertaining to my file, he may send such information to me at the address set forth below my name by first class mail. I acknowledge receiving a copy of this Receipt and will notify Mr. Roe if successor counsel is obtained.

File: \_\_\_\_\_  
File No: \_\_\_\_\_

Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Sworn to and subscribed before me:  
This \_\_\_\_ day of \_\_\_\_\_ 2004

Notary Public for South Carolina  
My commission expires:

Sometimes the client will be out of town or will have an attorney ready to take over. The following form can be used by the client to direct the ACPI to deliver the file to an attorney or other third party:

### **AUTHORIZATION TO RELEASE FILE**

The undersigned, being duly sworn, deposes and says:

1. I was a client of John L. Doe. I authorize Richard M. Roe, or his designee, to deliver my file which was obtained from John Doe's office by Richard M. Roe, Attorney to Protect Clients' Interest, and represented to Mr. Roe to be the entire original case file, to \_\_\_\_\_.
2. I understand that neither Mr. Roe nor Mr. Doe are retaining a copy of this file.
3. I understand that Richard M. Roe has not given me any legal advice. I understand that I need to immediately secure the services of an attorney to resume representation in this matter. I also understand that there may be deadlines affecting my file and I understand the urgency in obtaining the services of another attorney to resume representation.
4. I understand that by taking possession of this file, I am accepting the only copy of the file that exists, and that certain documents or items contained therein may be the only copies in existence. I assume responsibility for the integrity of the file from the date of delivery to my designee, and I acknowledge that any loss or destruction of all or a portion of the file after delivery will be my responsibility.
5. In the event Mr. Roe obtains any further documents or other information pertaining to my file, he may send such information to me, by first class mail, at my designee's address set forth above, or at such other address as I may provide in writing to Mr. Roe in the future. I acknowledge receiving a copy of this release.
6. I understand that upon delivery of my file to this individual, Mr. Roe's obligations with respect to my file shall terminate.

File: \_\_\_\_\_  
File No: \_\_\_\_\_

Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Sworn to and subscribed before me:  
This \_\_\_\_ day of \_\_\_\_\_ 2004

Notary Public for South Carolina  
My commission expires:

If the preceding form is used, then the following form should be executed at the time of delivery of the file to the third party:

**RECEIPT OF FILE**

The undersigned, being duly sworn, deposes and says,

1. I was designated recipient of a file belonging to a former client of John L. Doe.
2. I acknowledge receipt this \_\_\_\_ day of \_\_\_\_\_, 2004, of the file which was obtained from Mr. Doe's office by Richard M. Roe, Attorney to Protect Clients' Interest, and represented to Mr. Roe to be the entire original case file.

File: \_\_\_\_\_  
File No: \_\_\_\_\_

Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Sworn to and subscribed before me:  
This \_\_\_\_ day of \_\_\_\_\_ 2004

Notary Public for South Carolina  
My commission expires:

Sometimes it may be difficult to have someone sign for receipt of the file. For example, a client may direct you to take it to the bus station and ship the file by bus. The following form can be filled out by the person in your office delivering the file and a signed receipt is not practicable.

**AFFIDAVIT OF DELIVERY OF FILE**

The undersigned, being duly sworn, deposes and says:

At the request of a former client of John L. Doe, I delivered the file identified below:

To: \_\_\_\_\_

By: \_\_\_\_\_

in accordance with the client's directives.

File: \_\_\_\_\_

File No: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Sworn to and subscribed before me:

This \_\_\_\_ day of \_\_\_\_\_ 2004

Notary Public for South Carolina

My commission expires:

Subsection (b)(5) and (6) of “Duties of Appointed Attorney” states that the appointed attorney shall:

With the consent of the client, file notices, motions or pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; and Perform any other acts directed in the order of appointment.

The subcommittee has proposed a change to the Rules of Civil Procedure and/or the Code of Laws to allow a grace period to extend jurisdictional time limits and statutes of limitation if a client has retained an attorney and an APIC is later appointed. For now, there is no such grace period. One of your very first orders of business is to determine whether there are any unfiled actions with looming statutes of limitations problems or other actions in which jurisdictional problems are imminent. This is also a good time to re-read your Order of Appointment to determine whether there are other required actions on your part not covered by Rule 31 which are expressly set forth in the Order.

During Phase 2, you are getting clients in and files out as quickly as possible. You may find it helpful to spend an hour early in your appointment and call several attorneys in your locale who share the same practice areas as the lawyer. Ask the attorneys if they would be willing to take immediate referrals. Tell them that you will be rotating the referrals from a short list of attorneys and that you cannot vouch for the merits of any particular case. For instance, if the lawyer has a general practice, you may want to create a master list of four domestic law attorneys, four personal injury attorneys, and four general business and property attorneys. Have your staff make the initial appointment with the attorney to whom you are referring the case when the client picks up the file. You will be doing the client a real service by “handing-off” the client to the attorney.

It is important to inform the client of available help. The APCI can obtain handouts from the SC Bar informing the clients of the Lawyer’s Fund for Client Protection. In some circumstances, the client may need to be given the address of the Commission on Lawyer Conduct if they want to file a complaint against the lawyer.

Can you take over the representation of any client? Yes. Subsection (d) “Representation of Clients” states that:

Clients should be encouraged to engage other counsel as soon as possible but nothing in this paragraph shall be construed as preventing the appointed attorney from accepting employment by any client of the lawyer.

Should you take over the representation of any client? That depends. Consider the total number of cases you will be managing as APCI, the time constraints and demands of your existing practice, your office staffing configuration, the appearance of “keeping the good cases and getting rid of the bad ones,” and your own mental health! You probably had a vibrant practice at the time of your appointment. The secured files may be in a state of disarray. Can you fulfill your

obligations as the APCI, service your existing clients and files, and take on new cases in mid-stream?

One APCI chose not to personally handle any of the files. Another attorney in the same practice would meet with any clients requesting immediate assistance. Otherwise, the emphasis was on getting the clients in and files out quickly. A different APCI kept most of the files because the lawyer's practice consisted of only real estate closing files and problems with the escrow account warranted keeping most of the files in one office.

If the lawyer had a trial practice, consider writing the chief administrative judges in the circuit courts and family courts in every county where the lawyer had pending cases. You may also want to write the chief administrative judge in any court in which you have a case close to trial. These judges, as well as federal district court judges and the Workers Compensation commissioners, have historically been extremely cooperative with APCIS in handling cases.

A sample letter:

[Letterhead]

May 6, 2004

Honorable James T. Justice  
Post Office Box 276  
Columbia, South Carolina 29202

Re: John L. Doe

Dear Judge Justice:

Last Friday the South Carolina Supreme Court suspended John L. Doe from the practice of law. In the Order of suspension signed by the Chief Justice, I was appointed the Attorney to Protect Clients' Interest as required by Rule 31, RLDE, Rule 413, SCACR. A copy of the Chief Justice's Order is attached for your immediate reference.

It is my understanding that Mr. Doe had at least 250 files. I will be inventorying his files this week. However, I do not have a full and complete understanding of his trial schedule or calendar. Therefore, I would ask you, as Chief Administrative Judge for the Fifth Judicial Circuit, to note Mr. Doe's suspension and, if you encounter any trial or hearing rosters which would require Mr. Doe's presence, that I be notified and given an opportunity to protect the clients' interest. In the meantime, I will be attempting to determine the current status of all of his files and proceeding with my obligation to distribute the files of his clients or to substitute counsel.

By copy of this letter to the Richland County and Kershaw County Clerks of Court, I am informing them of the suspension and my request for any notices concerning rosters and hearings.

I thank you in advance for your cooperation and assistance in this matter.

Yours very truly,

Richard M. Roe  
Attorney to Protect Client's Interest

RMR  
Enclosure

cc: The Honorable Cathy Clerk  
The Honorable Carl Clerk

ODC and the Commission on Lawyer Conduct may still be investigating the lawyer during your appointment. Because Rule 31 (g) provides:

An appointed attorney shall not be permitted to disclose any information contained in the files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment.

ODC will arrange forth written consent of any client involved in the on-going investigation to allow you to give ODC access to the client's file. Remember, your primary role as APCI is to protect the clients' interests. You are not "taking over the lawyer's practice." You do serve a vital role in ensuring the orderly and efficient transition of clients and their files during the interruption of the lawyer's practice. Strive to carry out your duties in a fair, compassionate, and productive manner. If conflicts arise between the various interested persons, avoid "taking sides." Again, seek consensus and clear communication among all parties.

Although you are not an attorney to assist ODC, you may find yourself discovering potential misconduct of the suspended lawyer. You have, as all members of the Bar have, a continuing duty in accordance with Rule 8.3(a), RPC, Rule 407, SCACR, to report possible misconduct. Although not a pleasant experience, your actions will assist in your duty to protect clients. Misconduct that occasionally occurs during suspensions include retention of some client files by the suspended lawyer, giving out client files without the client's knowledge or consent, and practicing law while under suspension. As the APCI reviews the files taken custody of, irregularities are uncovered that may need to be reported to ODC.

### **PHASE 3 -TERMINATING THE APPOINTMENT**

The time has come for you to wind up your affairs as an APCI and petition the SC Supreme Court for termination of your appointment. Subsection (e) "Termination of Appointment" states:

When the provisions of (b) above and the order of appointment have been complied with, the appointed attorney shall apply to the Supreme Court for termination of the appointment. The application shall contain the written releases of clients to whom files and other property were returned, information regarding the efforts made to contact the lawyer's remaining clients, an inventory of the files and other property remaining in the appointed attorney's possession and an itemized account of the expenses incurred in carrying out the order of the Supreme Court appointing the attorney. Upon approval of the application by the Supreme Court, all files and property remaining in the appointed attorney's possession shall be deposited with the Commission. Unless otherwise ordered by the Supreme Court, the files shall be retained by the Commission for a period of 3 years at which time they shall be destroyed in a manner which protects their confidentiality. Other client property

remaining in the possession of the Commission after 3 years shall be disposed of in a manner as ordered by the Supreme Court.

Use this checklist to assist you in verifying that you have fulfilled your duties and obligations:

### CHECKLIST

RE: Termination of Appointment of Attorney to Assist Clients' Interest

In order to have an appointment terminated, Rule 3 1 (e) requires:

- \_\_\_\_\_ Notification of each client by first class mail in pending matter at client's address shown in file,
- \_\_\_\_\_ To obtain papers, money, and other properties to which client is entitled.
- \_\_\_\_\_ Time and place where papers, money and other property can be obtained by clients.
- \_\_\_\_\_ Calling attention to any urgency in obtaining papers, etc,
- \_\_\_\_\_ Publication one time per week for three consecutive weeks of the discontinuance or interruption of lawyer's practice in a newspaper of general circulation in county where lawyer resided or engaged in substantial practice of law
- \_\_\_\_\_ Name and address of lawyer whose practice was discontinued or interrupted
- \_\_\_\_\_ Date, Time and location where clients can pick up files
- \_\_\_\_\_ Name, address and phone number of attorney appointed to protect
- \_\_\_\_\_ Copy of newspaper notice by first class mail to Errors and Admissions Insurer and any other entity having reason to be so informed.
- \_\_\_\_\_ Release papers, money, and other property to clients entitled to obtain receipt.
- \_\_\_\_\_ With consent of client, file notices, motions, and pleadings where jurisdictional time limits is involved and other counsel not yet obtained.
- \_\_\_\_\_ Perform other duties directed in order of appointment.
- \_\_\_\_\_ Certify provisions of 3 1 (b) met
- \_\_\_\_\_ Application for termination to certain written receipts for client files.
- \_\_\_\_\_ Information regarding efforts made to contact clients.
- \_\_\_\_\_ Inventory to files and other property remaining in appointed attorney's possession,
- \_\_\_\_\_ Itemized account of expenses incurred in carrying out order of court.
- \_\_\_\_\_ Upon approval of application for termination, all faces deposited with Commission,
- \_\_\_\_\_ Status of bank accounts for which the Trustee took control,

Adapt the following sample petition:

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

IN THE MATTER OF:

APPLICATION FOR TERMINATION  
OF APPOINTMENT AS ATTORNEY  
TO PROTECT CLIENTS' INTEREST

JOHN DOE  
Respondent,  
STATUS: DISBARRED

RICHARD M. ROE,  
Petitioner,

The application of your Petitioner respectfully shows unto this Honorable Court as follows:

1. I was appointed by this Honorable Court by Order dated \_\_\_\_\_ to assume responsibility for Respondent's client files, client Property, trust accounts, escrow accounts, operating account, and Of the law office accounts Respondent maintained at the time of his disbarment. I was also ordered to conform to Rule 31, RLDE, Rule 413, SCACR, to protect the interest of Respondent's clients. I embarked upon my duties and responsibilities pursuant to said Order of the Court and have now completed my assignment by performing the duties and actions listed below.
2. All clients whose names, addresses, telephone numbers, and files were provided to me by Respondent were notified of my appointment by this Honorable Court by letter, a sample copy of which is attached, sent by first class mail. Attached is a listing of all clients who were sent a letter. All remaining clients for which I lacked the above referenced information were informed of my appointment via newspaper notification.
3. All files placed in my possession belonging to clients formerly of respondent have been delivered to said clients either by personally delivering the same to them and obtaining a receipt or by mailing the files to such addresses as given by the clients. Receipts for the said mailings were obtained from the post office at such times as the files were posted. Original receipts are attached to this Application.

4. In cases involving hearings of one kind or another, specifically with regard to criminal cases, Petitioner responded by notification to the hearing officer, solicitor, opposing counsel or clerk of court.

5. I have completed all of my work involved in my appointment by this Honorable Court and there remain on hand several client files which have not been claimed, picked up, requested to be sent nor arranged by client to take possession. In accordance with the Rule, I will send these files along with an inventory under separate cover to this Honorable Court for forwarding to the appropriate Commission for storage upon approval of this Application.

6. Petitioner has expended the following sums for postage, copies, publication of newspaper notice, and supplies (envelopes, stationery, labels):

Postage and Certificates of Mailing  
Copies  
Newspaper Legal Notice  
Supplies  
Storage Costs  
[any additional costs]

7. Certain clients of Respondent have requested refunds of monies paid by them as retainers. I have been unable to determine whether any of the funds paid were earned or what the actual amount is owed to the client. The balance at present in respondent's escrow account is \_\_\_\_\_ dollars. Respondent's office operating account balance is \_\_\_\_\_ dollars. These are the only bank accounts upon which I received information and corresponding documents. The sums on hand are not nearly enough to reimburse those persons whose claims may or may not be legitimate or who are entitled to a refund of some portion, if not all of the retainer paid by them. I respectfully request this Honorable Court to provide guidance as to what to do with regard to the monies an hand and whether or not the same should be disbursed to the Lawyers' Fund for Client Protection. The list of claimants is attached.

8. That having notified each client for whom Petitioner was given a file and address of his or her right to his or her file by first class mail, and notifying all other clients by publication of legal notice in a newspaper of general circulation in the county in which Respondent resided and engaged in the practice of law, once a week for three consecutive weeks, and said notice included the name and address of the lawyer whose practice has been interrupted; the undersigned appointed attorney's name, the contact person's name, the phone number and times that the clients might call to make arrangements to retrieve their files, a copy of said advertisement is attached to this Application. In some instances, former clients of the Respondent contacted my office asking to retrieve their files but I was unable to provide them with their files because I did not have possession of them. A list of their names is attached.

9. All clients were notified, either by mail notification, personal contact, or telephone communication and were encouraged to engage other counsel as soon as possible. In some instances, local counsel was engaged for them. (although the undersigned did not undertake any representation of any of the clients formerly of Respondent)

WHEREFORE, having fully performed my obligations under and by virtue of this appointment by this Honorable Court, I pray that the Court dismiss him from any further responsibility and, where possible, reimburse me for those expenses incurred while involved in performance of my duties under Rule 3 1, LDE, Rule 413, SCACI, and direct me as to disposition of remaining client files, bank records and monies.

BY:

Columbia, South Carolina

This \_\_\_\_ day of \_\_\_\_\_, 2005.

RICHARD M. ROE, Petitioner

Submit the application to the Supreme Court . The original Application for Termination of Appointment is to be filed with the Court along with the original receipts obtained from the clients and six copies of the application. A copy of the application and receipts are to be served on the Court. Once approved, deliver the files to the Commission and carry out any special directives concerning the disposition of funds and files. Finally, take your staff out to lunch. Let them know how much you've appreciated their assistance throughout this journey.