

AGREEMENT TO CLOSE LAW PRACTICE

This Agreement is entered into by and between: _____, hereinafter referred to as "Planning Attorney," an individual admitted and licensed to practice as an attorney in the State of South Carolina and whose office for the practice of law is located at the address on the signature page, and _____, hereinafter referred to as "Successor Attorney," an individual admitted and licensed to practice in the State of South Carolina and whose office for the practice of law is located on the signature page. This Agreement is effective as of the date it is signed by the last party to sign it.

1. Purpose.

In accordance with Rule 1.19, RPC, Rule 407, SCACR, the purpose of this agreement is to protect the legal interests of the clients of Planning Attorney and the Planning Attorney's survivors or dependents in the event Planning Attorney is unable to practice law by reason of his/her death, disability, incapacity or other inability to act. Planning Attorney has requested Successor Attorney to act as his/her agent to take all necessary actions to close Planning Attorney's practice and Successor Attorney has consented to this appointment; and Planning Attorney and Successor Attorney are entering into this Agreement to define their rights and obligations in connection with the disposition or closing of Planning Attorney's practice.

2. Implementation Date.

This Agreement shall be implemented only upon Planning Attorney's death, disability, incapacity or other inability to act, as established by paragraph 3. The appointment and authority of Successor Attorney shall thereafter remain in full force and effect as long as it is necessary or convenient to carry out the terms of this Agreement, or unless sooner terminated under paragraphs 9 or 12.

3. Establishing Death, Disability, Incapacity.

Successor Attorney shall make the determination that Planning Attorney is dead, disabled, incapacitated or otherwise unable to practice law, and if disabled or incapacitated, that such disability or incapacity is permanent in nature or likely to continue indefinitely. Successor Attorney shall base his/her determination on reliable evidence such as communications with the members of Planning Attorney's family and written opinions of licensed physicians and other medical professionals who diagnosed or treated Planning Attorney. As part of the process of determining whether the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law, all individually identifiable health information and medical records may be released to Successor Attorney, even though the authority of the Successor Attorney has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 42 U.S.C. 1320d and 45 C.F.R. 160-164. Successor Attorney may also consider the opinions of colleagues, employees, friends or other individuals with whom Planning Attorney maintained a continuous and close relationship. Successor Attorney shall sign an affidavit stating the facts upon which his/her determination is based, and such affidavit shall, for the purposes of this Agreement, be conclusive proof that the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law.

4. Power of Attorney.

Planning Attorney hereby appoints Successor Attorney as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully

and as completely as Planning Attorney could do personally if Planning Attorney were able. This power of attorney is not affected by physical disability or mental incompetence of the Planning Attorney that renders the Planning Attorney incapable of managing his own estate.

5. Consent to Close Practice.

Planning Attorney hereby gives consent to Successor Attorney to take all actions necessary to close Planning Attorney's legal practice in the event that Planning Attorney is unable to practice law by reason of his/her death, disability, incapacity or other inability to act.

6. Specific Powers.

Planning Attorney consents to and authorizes the following actions by Successor Attorney in addition to any other actions Successor Attorney in his/her sole discretion deems necessary to carry out the terms of this Agreement:

- a. Access to Planning Attorney's Office. To enter Planning Attorney's office and use his/her equipment and supplies as needed to close Planning Attorney's practice.
- b. Designation as Signatory on Financial Accounts. To replace Planning Attorney as signatory on all of Planning Attorney's law office accounts with any bank or financial institution, including without limitation, attorney trust, escrow or special accounts, checking accounts, and savings accounts. Planning Attorney's bank or financial institution may rely on this authorization unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.
- c. Opening of Mail. To receive, sign for and open Planning Attorney's law practice mail and deliveries by courier and to process and respond to them, as necessary.
- d. Possession of Property. To take possession, custody and control over all of Planning Attorney's property relating to his/her law practice, real and personal, including client files and records.
- e. Access to and Inventory/Examination of Files. To enter any storage location where Planning Attorney maintained his/her files and to inventory and examine all client case files, including client wills, property and other records of Planning Attorney. If Successor Attorney identifies a conflict of interest with a specific file or client, he/she shall notify the client of the conflict and advise the client to obtain substitute legal counsel.
- f. Notification to Clients. To notify clients, potential clients and those who appear to be clients, of Planning Attorney's death, disability, incapacity or other inability to act, and to take whatever action Successor Attorney deems appropriate to protect the interests of the clients, including advising the clients to obtain substitute counsel.
- g. Transfer of Files. To safeguard files and arrange for their return to clients; to obtain consent from clients to transfer files to new attorneys, to transfer files and property to clients or their new attorneys; to obtain receipts therefor.
- h. Storage of Files and Attorney's Records. To arrange for storage of closed files, unclaimed files, and records for a minimum of six (6) years from the implementation date (defined in paragraph 2 above) of this Agreement or in accordance with the Rules of Professional Conduct, Rule 407, SCACR and Rule 417, SCACR.
- i. Transfer of Original Documents. To arrange for and transfer to clients all original documents, including wills, trusts and deeds.

- j. Extensions of Time. To obtain client's consent for extensions of time, to contact opposing counsel and courts/administrative agencies to obtain extensions of time, and to apply for extensions of time if necessary pending employment of new counsel by clients.
- k. Litigation. To file motions, pleadings, appear before court, and take any other necessary steps where the clients' interests must be immediately protected pending retention of other counsel.
- l. Notification to Court and Others. The Successor Attorney should immediately inform the receiver of the South Carolina Supreme Court Office of Commission Counsel of the Planning Attorney's death or other inability to act and the Successor Attorney's contractual role. If necessary, the Successor Attorney may petition the receiver to request an order of succession appointing the Successor Attorney to inventory the files of the disabled or deceased lawyer and to take action as appropriate to protect the interests of the lawyer and the lawyer's clients. The Successor Attorney should contact all appropriate agencies, courts, adversaries and other attorneys, professional membership organizations such as the South Carolina Bar, local bar associations and any other individual or organization that may be affected and advise them of Planning Attorney's death or other inability to act and that Planning Attorney has given this authorization to Successor Attorney.
- m. Collection of Fees and Return of Client Funds. Pursuant to Rules 1.15 and 1.16, RPC, Rule 407, SCACR, to send out invoices for unbilled work by Planning Attorney and outstanding invoices; to prepare an accounting for clients on retainer, including return of client funds; to collect fees and accounts receivables on behalf of Planning Attorney or Planning Attorney's estate; and to prepare an accounting of each client's attorney-client trust account and arrange for transfer of trust account funds, including obtaining consent from client to transfer trust account funds and acknowledgment of receipt of trust account funds by new counsel or client.
- n. Payment of Business Expenses and Creditors. To pay or settle Planning Attorney's business expenses including but not limited to, office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel, to determine the nature and amount of all claims of creditors, including clients. Successor Attorney will not process, pay, or in any other way be responsible for payment of Planning Attorney's personal bills.
- o. Personnel. To continue the employment of Planning Attorney's employees and other personnel to the extent necessary to assist the Successor Attorney in the performance of his/her duties; to compensate and to terminate such employees or other personnel; and to employ or dismiss agents, accountants, attorneys or others.
- p. Termination of Obligations. To terminate or cancel business obligations of Planning Attorney, including office lease; lease of equipment such as copier, computer, furniture; library, magazine or newspaper subscriptions; telephone service, internet service or cellular phone service.
- q. Insurance. To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability, or other office insurance of Planning Attorney; to notify any professional liability insurance carriers of Planning Attorney's death, disability, incapacity or other inability to act; and to cooperate with such insurance carriers regarding matters related to Planning Attorney's coverage, including addition of Successor Attorney as an insured under said policy.

- r. Taxes. To prepare, execute or file income, information or other tax returns or forms and to act on behalf of Planning Attorney's law practice in dealing with any office of any federal or state tax department or agency.
- s. Settlement of Claims. To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, or disputes between Planning Attorney's law practice and any other person or entity; and to commence or defend all actions affecting Planning Attorney's law practice.
- t. Execution of Instruments. To execute, as Planning Attorney's attorney-in-fact, any deed, contract, affidavit or other instrument on behalf of Planning Attorney.
- u. Attorney as Fiduciary. To resign any position which Planning Attorney holds as a fiduciary, such as executor or trustee, and to notify other named fiduciary, if any, and beneficiaries of the estate or trust; if the trust or will does not name a successor fiduciary, to apply to the court for appointment of a successor fiduciary; and to confer with the personal representative of the Planning Attorney's estate with respect to the obligation of such personal representative to account for the assets of the estate or trust that Planning Attorney was administering.
- v. Power of Sale and Disposition. To sell or otherwise arrange for disposition of Planning Attorney's furniture, books, equipment, or other personal property located in Planning Attorney's law office.
- w. Representation of Planning Attorney's Clients. To provide legal services to Planning Attorney's clients, provided that Successor Attorney is able to accept such a client in accordance with the Rules of Professional Conduct and obtains the consent of Planning Attorney's clients. If Planning Attorney's clients engage Successor Attorney to perform legal services, Successor Attorney shall have the right to payment for such services from such clients.
- x. Access to Safe Deposit Box. To open Planning Attorney's office safe or safe deposit box used for law practice, to inventory same, and to arrange for return of property to clients.

7. Payment For Services.

Planning Attorney agrees to pay Successor Attorney a reasonable sum for services rendered by Successor Attorney while closing the law practice of Planning Attorney. Successor Attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Successor Attorney agrees to provide the services specified herein as an independent contractor. Planning Attorney and Successor Attorney may agree to a fee sharing arrangement as payment for services, as long as the agreement complies with Rule 1.5(e), RPC, Rule 407, SC. In cases where an accounts receivable exists, Planning Attorney and Successor Attorney may agree to a division of fees based upon quantum meruit, and in compliance with Rule 1.5(e), RPC, Rule 407, SCACR.

8. Preserving Attorney-Client Privilege and Client Confidences.

As set forth in Rule 1.6, RPC, Rule 407, SCACR, Successor Attorney shall maintain the confidences and secrets of a client and protect the attorney-client privilege as if the Successor Attorney represented the clients of Planning Attorney and shall only make disclosures of information reasonably necessary to carry out the purpose of this Agreement in accordance with Rule 1.6, RPC, Rule 407, SCACR.

9. Resignation of Successor Attorney and Appointment of Substitute Successor Attorney

- a. Prior to the effective date of this Agreement, Successor Attorney may resign at any time by giving written notice to Planning Attorney. After the effective date of this Agreement, Successor Attorney may resign by giving written notice to Planning Attorney, or if Planning Attorney is deceased, to Planning Attorney's personal representative, subject to any ethical or professional obligation to continue or complete any matter undertaken by Successor Attorney.
- b. (OPTIONAL) If Successor Attorney resigns or otherwise is unable to serve, Planning Attorney appoints _____ as Substitute Successor Attorney, and Substitute Successor Attorney consents to this appointment as evidenced by his/her signature to this Agreement. Substitute Successor Attorney shall have all the rights and powers, and be subject to all the duties and obligations of Successor Attorney. During the tenure of Successor Attorney, Substitute Successor Attorney shall review and take any necessary action with respect to those client files of Planning Attorney in which Successor Attorney identifies a conflict of interest.

10. Indemnification.

Planning Attorney or his or her duly appointed personal representative agrees to indemnify Successor Attorney against any claims, loss, or damage arising out of any act or omission by Successor Attorney under this agreement, provided the actions or omissions of Successor Attorney were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Successor Attorney was assisting Planning Attorney or his or her duly appointed personal representative with the closure of Planning Attorney's office. This indemnification agreement does not extend to any acts, errors, or omissions of Successor Attorney while rendering or failing to render professional services in Successor Attorney's capacity as the lawyer for the former clients of Planning Attorney. Successor Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

11. Sale of Planning Attorney's Practice with Option to Purchase.

Successor Attorney shall have the right to purchase Planning Attorney's practice, provided that the purchase price is the fair market value as determined by an appraiser and that the terms of the sale are approved by the personal representative of Planning Attorney's estate or an independent third party, or under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in compliance with Rule 1.17, RPC, Rule 407, SCACR and other applicable law. If Successor Attorney opts not to purchase Planning Attorney's practice, Successor Attorney will make all reasonable efforts to sell Planning Attorney's practice in compliance with Rule 1.17, RPC, Rule 407, SCACR and will pay Planning Attorney or Planning Attorney's estate all monies received, (OPTIONAL) less a commission of ___ percent.

12. Revocation, Amendment and Termination.

- a. Prior to the effective date of this Agreement, Planning Attorney may at any time remove the Successor Attorney, or revoke, amend or alter this Agreement by written instrument delivered to Successor Attorney and Substitute Successor Attorney, provided that any amendment or modification to Successor Attorney's obligations hereunder and to his/her rate of compensation shall require Successor Attorney's written consent.

- b. This Agreement shall terminate upon (i) prior to the effective date of this Agreement, delivery of written notice of termination by Planning Attorney to Successor Attorney and Substitute Successor Attorney; and (ii) after the effective date of this Agreement, delivery of a written notice of termination to Successor Attorney by the personal representative of Planning Attorney's estate upon a showing of good cause, or by a court order.

13. Miscellaneous.

- a. **Amendment.** This Agreement may be amended only with the written consent of the parties to this Agreement.
- b. **Binding Effect.** Subject to the restrictions contained in this Agreement, this Agreement shall be binding on the parties and their respective successors, assigns, representatives, and beneficiaries.
- c. **Counterparts and Facsimiles.** The parties may execute this Agreement simultaneously, in any number of counterparts, or on facsimile copies or a scanned email, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- d. **Entire Agreement.** This Agreement contains the parties' entire agreement and supersedes any prior oral or written agreements among them with respect to the subject matter of the Agreement. There are no representations, agreements, arrangements, or understandings (oral or written) among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement.
- e. **Governing Law.** The transactions contemplated by the provisions of this Agreement and the parties' respective rights and obligations under this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. **Independent Representation.** Each party acknowledges that he/she had the right to obtain independent legal, tax, medical and financial advice prior to executing this Agreement.
- g. **Jurisdiction and Venue.** The parties agree that all actions or proceedings arising out of or in connection with this Agreement shall be tried and litigated exclusively in the state and federal courts located in the State of South Carolina.
- h. **Notice.** A notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (i) on personal delivery; (ii) 24 hours after deposit for overnight service with Federal Express or a comparable express courier, addressed to a party at the address set forth below his or her signature; or (iii) 48 hours after deposit in the United States mail, by certified mail, postage prepaid, addressed to party to this Agreement at the address set forth below his or her signature. A party may designate another address for notice purposes by giving written notice to the other parties.
- i. **Severability.** If a court of competent jurisdiction finds any provision in this Agreement to be invalid, such invalidity shall not affect the remainder of the

Agreement; the invalid provision shall be deemed severed from it and the remainder of the Agreement shall remain enforceable in accordance with its terms and of full force and effect.

- j. **Waiver.** A party's waiver of any breach of any provision contained in this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of that provision or any other provision of this Agreement.

- k. **Will or Estate Planning Provisions.** Planning Attorney acknowledges that he/she has made adequate provisions to carry out the provisions of this Agreement in his/her will or estate planning and that his/her spouse or domestic partner has consented to the terms and conditions thereof.

PLANNING ATTORNEY

[Planning Attorney]

[Date]

Address:

Telephone:
Cell Phone:
Email:

Sworn/affirmed to and subscribed before me
On this _____ day of _____, 20____
Personally known [☐] or Produced identification [☐]
Type of Identification produced _____

(Signature of Notary Public)

(printed name of Notary Public), Notary Public
_____ County, South Carolina
My commission expires _____
(Notary Seal)

SUCCESSOR ATTORNEY

I accept the duties and responsibilities of the Successor Attorney as set forth in this Agreement. I am a member in good standing of the South Carolina Bar.

[Successor Attorney]

[Date]

Address:

Telephone:

Cell Phone:

Email:

Sworn/affirmed to and subscribed before me

On this _____ day of _____, 20__

Personally known ☐ or Produced identification ☐

Type of Identification produced _____

(Signature of Notary Public)

(printed name of Notary Public), Notary Public
_____ County, South Carolina

My commission expires _____
(Notary Seal)

(OPTIONAL)
SUBSTITUTE SUCCESSOR ATTORNEY

I accept the duties and responsibilities of the Successor Attorney as set forth in this Agreement. I am a member in good standing of the South Carolina Bar.

[Successor Attorney]

[Date]

Address:

Telephone:

Cell Phone:

Email:

Sworn/affirmed to and subscribed before me

On this _____ day of _____, 20__

Personally known [] or Produced identification []

Type of Identification produced _____

(Signature of Notary Public)

(printed name of Notary Public), Notary Public
_____ County, South Carolina

My commission expires _____
(Notary Seal)