

Handbook for a Trustee of the Law Practice of a Missing, Incapacitated or Deceased Attorney

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Table of Contents

A.	Introduction	Page 1
B.	When Should a Trustee Be Appointed?	Page 1
C.	Appointment of the Trustee	Page 3
D.	Duties of the Trustee	Page 4
E.	Getting Paid	Page 10
F.	Reporting to the Court & Discharge	Page 10
G.	Conclusion	Page 10
H.	Checklist of Duties of the Trustee	Page 11
I.	FAQs	Page 12

Sample Forms

Ex. 1 – Petition for Order Appointing Trustee	Page 13
Ex. 2 – Order Appointing Trustee	Page 15
Ex. 3 – Inventory of Client Files	Page 17
Ex. 4 – Letter to Clients	Page 18
Ex. 5 – Newspaper Notice	Page 19
Ex. 6 – Acknowledgment of Receipt of File	Page 20
Ex. 7 – Motion for Order Allowing Disbursement of Client Funds	Page 21
Ex. 8 – Order Allowing Disbursement of Client Funds	Page 23
Ex. 9 – Letter to Personal Representative	Page 25
Ex. 10 – Petition for Order Discharging Trustee	Page 26
Ex. 11 – Order Discharging Trustee	Page 33

Handbook for a Trustee of the Law Practice of a Missing, Incapacitated, or Deceased (MID) Attorney

A. Introduction

This handbook is designed to assist a lawyer who is appointed as the trustee of the law practice of a missing, incapacitated or deceased (MID) sole practitioner pursuant to SCR 12.02 or SCR 12.03. While no single document or checklist can answer every question that a trustee will encounter, the following material is intended to answer some basic questions and provide sample forms for the trustee.

In many cases, questions will arise for which this handbook provides no answer. In those cases, trustees are encouraged to call the State Bar of Wisconsin (SBW) Ethics Hotline for guidance.

The State Bar greatly appreciates the service that trustees provide to the public and the profession by ensuring the orderly winding up of the law practices of MID attorneys.

B. When Should a Trustee Be Appointed?

Trusteeships pursuant to SCRs 12.02 and 12.03 are limited to the practices of sole practitioners. Appointment of a trustee is not necessary if a missing, incapacitated, or deceased lawyer practices in a firm with other lawyers because the MID attorney's clients are also clients of the firm. In such a case, the partner(s) or associate(s) must notify affected clients and arrange for the necessary transition of responsibility for those clients. This manual, therefore, deals only with trustees appointed for sole practitioners.

Ideally, a sole practitioner will have made advanced plans for another lawyer to step in and manage their practice in the event of death or disability. It is strongly suggested that all Wisconsin attorneys register a successor with the SBW. This can be done by logging into a member account at Wisbar.org, selecting *myProfile*, and scrolling down to the Advanced Profile section. The attorney designated as successor will be notified by SBW that such a designation has been made. An excellent resource for advanced planning and for guidance for the designated lawyer is *After All, You are only Human: The Solo Practitioner's Handbook for Disability and Death* by the Solo and Small Firm – General Practice Section of the State Bar of Wisconsin.¹ If a lawyer is serving as successor counsel, the lawyer may wish to initiate a Chapter 12 proceeding with the

¹ Available at
<http://www.wisbar.org/formembers/groups/sections/SoloSmallFirmandGeneralPracticeSection/Pages/FileCabinet.aspx?CurrentPath=Resources+for+Death+and+Disability%2f>

appropriate circuit court. A trusteeship provides clear authority for, and court supervision of, the process of winding up the assisted lawyer's practice. An attorney appointed trustee, however, for an MID attorney cannot serve in any other capacity as counsel for the MID attorney. This precludes the trustee from serving as personal representative of counsel for the personal representative of a deceased attorney's estate.

If you learn that another attorney has died, disappeared, or has become incapacitated, don't hesitate to discuss your concerns with SBW ethics counsel to determine if a Chapter 12 trusteeship would be advisable. Note, however, that the SBW does not have the resources to supply the trustee, nor is a list of possible trustees maintained. Also, no other entity in Wisconsin, such as the disciplinary agency (OLR) or the court system, able to provide a trustee. Ideally, the volunteer trustee attorney would come from the local community and be familiar with the MID's practice.

1. Medically Incapacitated Sole Practitioners

Pursuant to SCR 12.02(1)(a), "any interested person or person licensed to practice law in this state" may file a petition alleging that an attorney who is a sole practitioner has a medical incapacity. The petition must be filed in the county where the attorney resides or maintains an office. Any interested person may file the petition, but the court may only appoint a Wisconsin licensed attorney as trustee attorney; this is because the trustee attorney is authorized to provide, in certain circumstances, limited legal services for the clients of the incapacitated attorney.

In many if not most cases, it will be obvious that the lawyer in question has a medical incapacity. SCR 12.02 does not define what constitutes a "medical incapacity," but guidance may be found in SCR 22.001(8), which defines "medical incapacity" as "a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards." This definition can be of assistance to a lawyer who is petitioning to be an appointed trustee attorney and to the judge, who must determine if there is clear, satisfactory, and convincing evidence that the attorney is suffering from a medical incapacity prior to appointing a trustee attorney. If a question arises, SCR12.02(1)(c) allows a judge to order the subject attorney to undergo an examination.

2. Death or Disappearance of a Sole Practitioner

SCR 12.03 allows "any interested person or person licensed to practice law in this state" to file a petition for the appointment of a trustee attorney for the practice of a deceased attorney if no satisfactory arrangements have been made for the winding up of the deceased attorney's practice, or if 21 days have passed since the "disappearance or abandonment" of the practice of a sole practitioner. The terms disappearance and abandonment are not defined. Again, the appointed trustee attorney must be a Wisconsin licensed attorney.

C. Appointment of the Trustee

1. Selecting a Trustee

Wisconsin's rules do not specify whom the court should appoint as trustee attorney of an MID attorney's law practice. Any attorney who is in good standing with the Bar and is willing to perform the duties of a trustee is eligible for appointment. The attorney must also carry liability insurance. The trustee need not have the same kind of practice as the MID attorney, although some familiarity with the MID attorney's areas of practice would be advised. Depending upon the amount of work to be done, it may be wise to seek the appointment of more than one trustee.² Alternatively, an attorney appointed trustee may seek assistance from lawyers or support staff working under the supervision of the trustee attorney.³

2. Filing and Service of the Petition

The petition should be filed in the county in which the MID attorney last resided or maintained a law office. The petition should include the name of the proposed trustee(s) and a statement of the grounds necessitating appointment of a trustee. A sample petition is included in these materials as Ex. 1.

In the case of an attorney alleged to be medically incapacitated, the petition must be served upon the attorney alleged to be medically incapacitated. If personal service is not possible, notice by publication of a class 1 notice, as provided in ch. 985 of the statutes and mailing is sufficient. The medically incapacitated attorney may also nominate and consent to the appointment of a trustee. SCR 12.02(1)(g).

In the case of a deceased attorney, the petition shall be served upon the personal representative of the deceased attorney's estate, or, if no personal representative has been appointed, upon an adult heir or other appropriate person and the court may appoint a special administrator. In the case of an abandoned practice or disappeared attorney, service shall be upon the abandoning attorney. If personal service cannot be accomplished, notice by publication of a class 1 notice, as provided in ch. 985 of the statutes, and mailing is sufficient.

3. Entering the Order

If the court finds by clear and convincing evidence that an attorney has a medical incapacity and no other satisfactory arrangements have been made, the court shall appoint a trustee attorney.

² Neither SCR 12.02 nor 12.03 is clear whether more than one trustee may be appointed, but in practice, circuit court judges may be willing to do so.

³ For guidance with respect to supervisory responsibilities, see SCR 20:5.1 and SCR 20:5.3.

Upon a showing that no satisfactory arrangements have been made to wind up the practice of a deceased attorney, the court shall appoint a trustee attorney. Likewise, upon a finding that an attorney has disappeared or abandoned his practice, and no satisfactory arrangements have been made to continue the practice, the court shall appoint a trustee. A sample court order is attached as Ex. 2.

D. Duties of the Trustee

1. Introduction

The duties of an appointed trustee attorney can vary widely. In some cases, the MID attorney's practice was not active and little needs to be done to protect his or her clients. In other cases, particularly where the attorney had a large practice or suddenly died or disappeared, the trustee's job may be complicated and time-consuming.

The trustee has the following duties:

- a) Protect the clients' rights, files and property;
- b) Notify all clients of the appointment of the trustee attorney, as promptly as possible, and advise the clients to seek counsel of their choice;
- c) Deliver clients' files and property to them upon request;
- d) Collect outstanding attorney's fees, costs, and expenses; and
- e) Assist in the suspension, sale, or wind-up of the practice.

3. Conflicts and confidentiality

The trustee attorney is forbidden from acting as successor counsel for the clients of the MID attorney, but trustee attorneys are governed by the same rules of professional conduct as the MID attorney with respect to client matters and files. Therefore, trustee attorneys should observe the same duty of confidentiality toward the MID attorney's clients as they would their own clients. This can pose challenges should the trustee attorney discover that a conflict exists with respect to one of the MID attorney's clients. If the trustee attorney is exposed to the confidential information contained in an opposing party's client file, the trustee attorney has a conflict. If the trustee discovers a conflict, the trustee should avoid reviewing or taking other action with respect to the file and promptly notify the court. The court can then arrange for another attorney to handle the case for which the trustee attorney is conflicted out.

4. Getting Access to the Office & Client Files

After the order of appointment is signed, the trustee should immediately secure the files of the MID attorney's clients. If necessary to ensure the security of the files, the trustee should remove the MID attorney's files to the trustee's office or other safe location.

Ordinarily, getting into the MID attorney's office is not a problem once the court has named the trustee. Relatives of the MID attorney, a secretary or executors of the estate usually will provide the trustee with a key and access to the MID attorney's office. In a few cases, however, a trustee may be forced to seek a court order authorizing the trustee to gain access to the MID attorney's law office with the help of a locksmith. If a trustee encounters a problem getting access to the MID attorney's files or office, the trustee should contact the court or SBW ethics counsel.

5. Reviewing Client Files

The trustee's most important duty is to protect the interests of the MID attorney's clients. First, the trustee should review the MID attorney's files to determine which are active and which are closed. The trustee should keep a list of the files that have been reviewed, the status of the case and what was done with the file. A sample inventory is attached as Ex. 3. This list ultimately will be of assistance to the trustee attorney in demonstrating that the trustee has fulfilled his or her duties and should be discharged. Again, the trustee attorney should be mindful of the confidentiality of the information contained in the MID attorney's files.

6. Contacting Clients

Next, the trustee should contact each client who has an active matter pending and notify them that the MID attorney is no longer able to represent the client. If time permits, it is usually better to contact the clients in writing, as this creates a permanent record. In any event, the client should be advised to select another attorney and to arrange to pick up their file. The trustee attorney should be clear with clients that they cannot become their lawyer, except for acting as interim counsel when necessary to protect the interests of the client. A sample notification letter to clients is attached as Ex. 4.

If it is not possible to contact all of the MID attorney's clients, the trustee should make and preserve a record of efforts to locate the clients and notify the court. In cases of great difficulty in locating clients, the court may direct the trustee attorney to place a notice in the local newspaper directing clients of the MID attorney to contact the trustee. A sample newspaper notice is attached as Ex. 5.

Clients often ask trustees the reason(s) for their prior attorney's unavailability. Out of respect to the MID attorney, trustees are encouraged not to disclose any information regarding the unavailable attorney's situation or circumstances beyond what is cited in the order appointing the trustee or any other public document.

7. Protecting the Clients' Rights.

The trustee attorney is mandated to protect the clients' rights, files, and property. However, a trustee attorney is prohibited from serving as successor counsel for the MID

attorney's clients. A trustee may, however, at the request of the client, act as interim counsel⁴ and may take actions necessary to protect the clients' rights in a pending matter, such as filing motions for continuances or attending hearings for scheduling or other purposes.⁵ If the trustee decides to take action in a particular client's case, the trustee should make clear to the client, the court, and opposing counsel/ party that any action taken or appearance made by the trustee in a client's case is a limited appearance as trustee of the MID attorney's practice, not as an attorney for the client, and that the purpose of such limited appearance is solely for the protection of the client's interests during this transitional period. In many cases, the trial court clerk may help with calendaring problems. Local judges may also be willing to sign blanket orders continuing all the MID attorney's pending cases.

8. Copying Active Clients' Files

The trustee may make copies of active files before the original files are provided to the client. Keeping copies can protect both the MID attorney (or the estate of the MID attorney) and the trustee from claims by former clients. There is, however, no requirement that copies be kept once the original file is provided to the client and the cost of copying files may not be passed on to the client but must be charged to the MID attorney or the estate of the MID attorney. If you have a question about whether copies of records from a file should be made in a specific situation, call the SBW ethics counsel.

9. Delivering Files to Clients

As stated above, the trustee attorney's priority in winding down the MID attorney's practice is protecting client interests, particularly the interests of clients who have active files at the time their attorney becomes unavailable. After notifying active clients of the need to select new counsel and pick up their client file, the trustee will need to arrange for active clients to receive their client file, which may include making copies of files or documents. The trustee should make significant effort to return all active files to the respective clients; as discussed below, the trustee should exercise discretion in pursuing the notification and return of former clients.

When a client picks up their file, the trustee must ensure that all the client's materials are returned to the client. In Wisconsin, the file is the property of the client. The client is entitled upon demand to their entire file, with limited exceptions, even if the client owes the MID attorney or their estate for services performed on the client's behalf. See Wisconsin Ethics Opinion EF-16-03.

When the MID attorney's clients pick up their files, the trustee should ask each client to produce identification and sign a release indicating that the file has been received. A sample

⁴ This should be considered limited scope representation pursuant to SCR 20:1.2(c).

⁵ In most cases, if the trustee attorney makes an appearance before a court on behalf of a client of the MID attorney, the trustee attorney should make a limited appearance pursuant to Wis. Stat. § 802.045.

release is attached as Ex. 6. Absent clear instructions from the client, the file materials should not be released to anyone other than the client. The initial letter sent to the client should explain the process for releasing the file.

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

10. Former Client Files

The trustee attorney has an obligation to deliver client files to former clients upon request. The trustee attorney may wish to follow the closed file storage and disposition guidelines set forth in Wisconsin Ethics Op. EF-17-01. The trustee attorney, however, does not have the responsibility to bear the costs of storing former client files. There may be assets in the estate of a deceased MID attorney to pay for such storage. The trustee should make arrangements for the appropriate disposition of closed files if storage is impractical, such as when there are decades worth of old files.

The trustee attorney should exercise discretion in determining what action to take with regards to former client files. The trustee may consider a number of factors in deciding whether to contact clients whose files have been closed, including but not limited to the age of the file, the content of the file (such as whether the file contains original estate documents, etc.), and the number of former client files in the MID attorney's possession. For example, if the MID attorney retained a large volume of former client files, the trustee need not locate and contact every former client; instead, the trustee may choose to notify former clients of the availability of their closed client files via public notice (usually in the local newspaper) with a deadline for file collection, after which unclaimed files will be deemed abandoned and destroyed. In another example, if a closed file contains an original will, the trustee may need to attempt locating the client to deliver the sensitive document, if not the entire client file. When uncertain about what efforts, if any, should be made to contact former clients and/or return closed client files, the trustee should contact SBW ethics counsel or the court for further guidance.

11. Disposition of Files

When the trustee attorney has delivered all client files or concluded their attempt to deliver client files, a number of unclaimed client files will likely remain. The eventual disposition of unclaimed client files will depend on several factors, including the age of the files, the number of files, the content of the files, and the availability of storage options. The trustee attorney may seek guidance from the SBW ethics counsel or the court in determining the proper course of action for unclaimed client files. The trustee generally has two options for dealing with unclaimed client files: 1) arrange for long-term storage of the files, or 2) destroy the files.

In most cases, the trustee attorney can publish a notice in the local newspaper to all current and former clients of the MID attorney informing them that their client files are available for pickup by a specific deadline, after which the files will be deemed abandoned and destroyed. After such notice is published, and after the clients have been afforded ample time to pick up their client files, the trustee attorney may petition the court for an order deeming all unclaimed files abandoned and ordering their destruction to preserve client confidences. When the trustee attorney discovers original estate documents in the unclaimed client file(s), and the trustee has been unsuccessful in locating the client(s), the trustee should make some attempt to preserve such sensitive original documents, either with the Clerk of Court or some other office or facility. Again, the trustee should consult SBW ethics counsel or the court for guidance in preserving original estate documents discovered in unclaimed client files.

12. Recommending New Attorneys

Often, the MID attorney's clients will ask the trustee to recommend successor counsel. The trustee is free to make recommendations of attorneys they believe will competently represent the client, so long as it is clear that the selection of successor counsel is up to the client. Prior to doing so, the trustee should inform the client that the client has a right to choose successor counsel. No client file should be sent to a successor attorney without the client's prior approval or without the knowledge that the client has hired the attorney requesting the file.

13. Dealing with the MID Attorney's Business Account

Ordinarily, the duties regarding the MID attorney's office or business account, should be relatively straightforward since no client funds should be present in such an account. If, however, the MID attorney was using the alternative protection for advanced fees, clients may be entitled to a refund of advanced fees which are not being held in trust. In such cases, funds held in the operating account may be the appropriate source of such refunds.⁶ A review of the fee agreement with each client should clarify where any unearned funds are being held. Otherwise, funds held in the operating account are the property of the MID attorney or attorney's estate.

14. Dealing with the MID Attorney's Trust Account

Trustees often have duties relating to disposition of funds in the MID attorney's trust account or other fiduciary accounts. The trustee should first review the MID attorney's trust account records, reconcile the statements, and bring client ledgers up to date. If the MID attorney had a secretary or bookkeeper, this individual is often able to perform most of the auditing tasks for the trustee.

The MID attorney's trust account should contain only client funds, third party funds and a minimal amount of funds belonging to the MID attorney to cover bank service charges. Because client and third-party funds are not property of the MID attorney, efforts must be made to

⁶ See SCR 20:1.5(g) and (h)

disburse the funds to their owner. The trustee attorney should request the court authorize disbursement of the funds. A sample petition and order are attached as Ex. 7 and 8. It may be necessary to open a special administration for a deceased attorney to obtain the authority to disburse funds from trust. Because the trustee cannot serve as special administrator or as counsel for the special administrator, the trustee attorney will need to consult with the deceased attorney's heirs about the possibility of opening a special administration. If it is not possible to locate or determine the owner of funds held in the MID attorney's trust account, the trustee should contact the Unclaimed Property Office in the Wisconsin Department of Revenue.⁷

If a client claims he or she is owed funds in addition to those being held by the MID attorney, the trustee will be limited in the assistance or resolution he or she can provide to the client. In such a case, the trustee attorney should inform the client that he or she can contact another attorney to explore any legal options the client may have in recovering the allegedly missing funds from the MID attorney or the MID attorney's estate. Additionally, the trustee attorney can inform the client to submit a claim to the [Wisconsin Lawyers' Fund for Client Protection](#), which exists to reimburse clients who have suffered financial loss due to the dishonest conduct of their attorney. If a client continues to be disagreeable with the trustee, the trustee is encouraged to contact the SBW ethics counsel for further guidance.

In cases in which it appears that the MID attorney may have misappropriated funds from their trust account, the trustee attorney does not have mandatory reporting obligations under SCR 20:8.3(a) because the trustee attorney is functioning under a confidential lawyer assistance program as described by SCR 20:8.3(d)(1). That does not mean, however, that the trustee attorney does not have an obligation to inform the affected clients of what occurred and direct them to the Wisconsin Lawyers Fund for Client Protection and, if appropriate, the Office of Lawyer Regulation. The Office of Lawyer Regulation does not have jurisdiction over deceased attorneys and, thus, should not be contacted in the case of a deceased attorney.

15. Collecting Outstanding Fees

If the trustee attorney's review of the MID attorney's files and bank accounts reveal clients with outstanding balances, the trustee attorney should take steps to collect on those accounts. The MID attorney, should provide a detailed billing statement to the client, including an accounting of all funds received to date and the amount owing. Any outstanding fees collected are, the property of the deceased attorney's estate or the missing or disappeared attorney. The funds cannot be placed in a trust account but should be turned over to the estate of the deceased attorney or put in the business account of an incapacitated or disappeared attorney. The trustee attorney should inform the deceased attorney's estate of any outstanding balances so the estate can make an informed decision about attempting to collect the outstanding fees. The trustee attorney of an incapacitated or disappeared attorney does not have a duty to start collection actions against clients with outstanding balances.

⁷ <https://www.revenue.wi.gov/Pages/UnclaimedProperty/Home.aspx>.

E. Getting Paid

Administering the law practice of a MID attorney can be costly and time consuming. The trustee attorney is eligible to be compensated for his or her services and reasonable and necessary expenses, subject to court approval. In the case of a deceased attorney, the trustee attorney should seek compensation from the deceased attorney's estate. If an attorney is medically incapacitated or disappeared, the trustee attorney can be compensated from the assets the trustee attorney has collected. If the assets are not sufficient to compensate the trustee attorney, the medically incapacitated or disappeared attorney is personally liable for any additional compensation due to the trustee attorney. A sample letter to be filed with the Executive/Personal Representative of the deceased attorney's estate is included as Ex. 9. There is no provision in the rule for payment by any source other than the assets of an incapacitated or disappeared attorney or the estate of a deceased attorney.

In all cases, the trustee should keep track of their time and the expenses incurred, in conserving the MID attorney's practice. The trustee should also record time spent by clerical staff.

In discharging their duties, the trustee should be as frugal as possible. In some cases, the trustee may be able to use the MID attorney's office and support staff. The trustee should avoid using assistants who are beneficiaries of the MID attorney's estate as such individuals would gain access to client files which may contain information relevant to a claim against the estate.

F. Reporting to the Court & Discharge

The trustee's last duty is to report his or her activities to the court and file a petition to be discharged as trustee of the MID attorney's practice. The contents of the petition will vary, depending upon the services performed by the trustee. A sample petition and order are attached as Ex. 10 and 11. At a minimum, the petition should contain a list of files distributed to the clients and a discussion of how the other files were handled. If trust funds were disbursed, a record of the disbursements should be included, so that the court can approve disbursement, if it has not already done so.

G. Conclusion

Acting as trustee of the practice of a missing, incapacitated, deceased, or disabled lawyer can be a difficult and time-consuming matter. However, it is often a very rewarding experience, as the trustee has the satisfaction of rendering a great service to the public and the other members of the Bar. Each trustee's experience and problems are unique and it is impossible to answer every question ahead of time. Every trustee should feel free to call SBW ethics counsel any time a problem arises, however. We're here to help.

H. Checklist of Duties of the Trustee

1. Enter MID attorney's law office and, if necessary, remove files to a safe place.
2. Inventory the files to determine which are active and which are inactive. Keep a list of the files reviewed with a summary containing the name of the client, nature of the file, work done by the trustee and disposition of the file.
3. Send a letter to each client who has an active matter pending with the MID attorney. The letter should notify the client of the need to identify substitute counsel and to retrieve the file. Consider placing a notice in the local newspaper.
4. Take steps to preserve rights of clients while the client is arranging for substitute counsel. Often one telephone call to opposing counsel, explaining the problem, is sufficient.
5. Distribute files to clients, as the clients direct. Keep records of how and to whom the files are distributed. Follow the court order regarding the disposition of unclaimed files.
6. If there are funds in the MID attorney's trust account, reconcile the trust account records to determine ownership of the funds. The MID attorney's business account should also be reconciled as sometimes client funds are in a business account pursuant to SCR 20:1.5(g). Client funds might also be improperly placed in the business account.
7. In appropriate cases, disburse funds belonging to clients from the trust account and business account after filing a motion, giving notice to claimants if necessary and obtaining a proper order.
8. Keep track of services provided by the trustee and assistants, along with expenses incurred.
9. Submit a final report to the Court and petition for discharge.

I. FAQs

Q. Some of the members of the local Bar have agreed to handle the MID attorney's pending files. Can I box up the files and send them over to these attorneys?

A. The trustee should not release a client file to successor counsel without first obtaining the client's consent. The file belongs to the client and contains confidential information. The trustee should help protect the clients' confidential information and the clients' right to select successor counsel. The trustee can recommend attorneys to the MID's clients so long as the trustee believes the recommended attorneys can diligently and competently represent the client.

Q. I just got a settlement check in from an insurance company for a client represented by the MID attorney. The check is made out jointly to the MID attorney and the client. What do I do with it?

A. Get an order from the court authorizing you to endorse the MID attorney's name to the check if the initial order doesn't already give you that authority. Get the client to endorse the check as well and deposit it in the MID attorney's trust account. Have the court authorize disbursement of the funds, including approving payment of the MID attorney's fee to the MID attorney's estate or office account.

Q. I was just appointed trustee of a MID attorney's law practice. This is going to be more time consuming than I thought. Am I going to get paid for any of this? What about my clerical assistant.

A. In the case of a deceased attorney, the estate of the deceased attorney is liable for the compensation and expenses of the trustee, subject to court approval. In the case of an incapacitated or disappeared lawyer, the incapacitated or disappeared lawyer is personally liable for the compensation and expenses of the trustee, subject to court approval.

Ex. 1

IN RE: ATTORNEY MID,
ATTORNEY AT LAW.

PETITION FOR ORDER
APPOINTING TRUSTEE

Pursuant to Supreme Court Rule 12.02(incapacitation)/12.03(a)(death)/12.03(b)(disappearance), PETITIONER, petitions the court to enter an order appointing TRUSTEE as trustee due to Attorney MID's disappearance/incapacity/death. In support of this petition, the petitioner states the following:

1. Attorney MID was licensed to practice law in Wisconsin on DATE. On information and belief, Attorney MID disappeared/became incapacitated/died on or about DATE.

2. At the time of Attorney MID's disappearance/incapacity/death Attorney MID practiced law in NAME County, Wisconsin. Attorney MID's last address on record with the State Bar of Wisconsin was ADDRESS.

3. As of the date of this petition, Attorney MID represents Wisconsin clients whose interests need protecting.

4. On information and belief, funds belonging to clients or third parties are on deposit in trust, fiduciary or business accounts held solely in the name of Attorney MID.

5. Attorney MID had no partners or associates capable of winding down their law practice and ensuring that the interests of their clients and/or former clients are protected.

6. TRUSTEE, an attorney licensed to practice in Wisconsin, is willing to serve as trustee of the Wisconsin law practice of Attorney MID, pursuant to Supreme Court Rule 12.02(incapacitation)/12.03(a)(death)/12.03(b)(disappearance), for the purpose of protecting the interests of Attorney MID's clients.

7. TRUSTEE's mailing address is: ADDRESS.

WHEREFORE, the Petitioner prays for:

1. An order appointing TRUSTEE, an attorney licensed to practice in Wisconsin, to serve as trustee of the law practice of Attorney MID, and authorizing TRUSTEE to gain possession of Attorney MID's client files, to secure Attorney MID's trust and/or fiduciary accounts, to gain possession of Attorney MID's attorney trust and/or fiduciary account records (including all bank

statements, all canceled checks (front and back), all deposit slips, all check stubs and all client ledger cards) and to take such actions as are necessary to protect the interests of the clients and/or former clients of Attorney MID's; and

2. For such other and further relief as the Court deems appropriate.

Respectfully submitted, this the ____ day of _____, 20__.

PETITIONER
SB #
ADDRESS
PHONE #

Ex. 2

IN RE: ATTORNEY MID,
ATTORNEY AT LAW.

ORDER APPOINTING TRUSTEE

The matter is before the court for hearing on a petition to appoint a trustee attorney pursuant to Wisconsin Supreme Court Rule 12.02(incapacitation)/12.03(a)(death)/12.03(b)(disappearance). The petition states that Attorney MID, who was a sole practitioner, disappeared/is medically incapacitated/died and that no satisfactory arrangements have been made to protect the interests of their clients.

The court finds that no satisfactory arrangements have been made to protect the interests of Attorney MID's clients. Therefore, it is necessary to appoint a trustee attorney for that purpose.

NOW THEREFORE, IT IS ORDERED, that:

1. TRUSTEE is appointed trustee and shall do all the following:

- a. Enter Attorney MID's office;
- b. Protect Attorney MID's clients' rights, files and property;
- c. Notify all clients being represented in pending matters of the appointment of the trustee as promptly as possible, personally or by mail, and advise them to seek counsel of their choice.
- d. Deliver client files and property to the clients upon their request;
- e. Collect outstanding attorney fees, costs and expenses and make arrangements for the prompt resolution of any disputes concerning outstanding attorney fees, costs and expenses; and
- f. Assist and cooperate with Attorney MID in the suspension, termination or windup for their practice. [Incapacitation]
- f. Assist and cooperate with Attorney MID's personal representative, special administrator or other representative of the estate in the termination or sale of the practice under SCR 20:1.17. [Death]
- f. Collect any moneys and safeguard any assets in the office of the absent attorney and hold the moneys and assets in trust pending their disposition upon order of the court. [disappearance]

2. The trustee or their law firm shall;

- a. Not serve in any other capacity as counsel for Attorney MID. [Incapacitation]
- a. Not serve in any other capacity in the administration of Attorney MID's estate. [Death]
- a. Not serve in any representative capacity for Attorney MID. [Disappearance]
- b. Be compensated from any assets generated in connection with their efforts for their professional services and reasonable and necessary expenses. [Incapacitation]
- b. Be compensated from the assets of the estate for their professional services and reasonable and necessary expenses; [Death]
- b. Be compensated from the assets collected for their professional services and reasonable and necessary expenses. [disappearance]
- c. Be eligible to be a purchaser of the law practice under SCR 20:1.17; [Incapacitation and Death]
- d. Not be permitted to act as successor attorney [Disappearance]
- d. Not be permitted to act as successor attorney except and until the trustee becomes a purchaser of the law practice under SCR 20:1.17. [death or incapacitation]

3. Attorney MID's estate shall be liable for the trustee's compensation and expenses ordered above [Death]

Attorney MID shall be personally liable for any compensation and expenses ordered by the court [Incapacitation and disappearance];

4. The trustee shall have their own professional liability coverage with a carrier admitted to do insurance business in the states and whose coverage language clearly covers the work of the trustee attorney action under this section.

5. The trustee shall report to the court and file an accounting at least every 60 days until the winding up of the practice is completed; and

6. Upon completion of the winding up of the practice the trustee shall petition the court to be discharged as trustee.

This the _____ day of _____, 20_____.

By the Court:

Circuit Judge Br. X

cc: Office of Lawyer Regulation

Ex. 3

Inventory of Client Files

Client Name	File/Case No.	Nature of Matter/Status	Letter Sent	File Given to Client/Successor Counsel	Funds Returned to Client

Ex. 4

Date

Client Name

Client Address

Re: Attorney MID

Dear Client:

As you may know, Attorney MID has become incapacitated, died, or disappeared. Pursuant to a court order entered by Honorable judge on date, I have been appointed trustee of the law practice of Attorney MID. A copy of that order is enclosed.

As trustee, I am responsible winding up Attorney MID's practice. This includes assisting in transitioning clients to new attorney. As trustee, I cannot represent you. You should immediately make arrangements to retain a new attorney to represent you in your legal matter. If you would like the names of attorneys who might be willing to assist you, please let me know.

I have your client file in my possession. Please arrange to come by to pick up your file as soon as possible. Please call phone number before you come so that we may have your file ready when you arrive. Before I deliver your file to you, you must sign a written release authorizing its transfer and acknowledging receipt of the file. As a matter of security, please bring some form of identification, so that we may avoid releasing files to unauthorized persons. If you prefer, I can provide you with an electronic copy of your file. Files that are not picked up will be disposed of by court order. If you prefer that I provide your client file to your new lawyer, please have your new lawyer contact me.

As part of my duties, I will be disbursing any unearned fees or unexpended costs held by Attorney MID. I have reviewed your matter and have concluded you are not owed a refund/are owed a refund of amount/have any outstanding balance of amount. I will be back in touch with you about any owed or owing funds at a later date.

Thank you for your cooperation. Please let me know if you have any questions.

Sincerely yours,

Trustee of Law Practice of Attorney MID

Ex. 5

NOTICE

TRUSTEE, the court appointed trustee for the law practice of Attorney MID, hereby notifies the public and members of the State Bar of Wisconsin that Attorney MID's client files are being held at ADDRESS. Clients of Attorney MID and attorneys who represent former clients Attorney MID may arrange to obtain the client files, if any, by contacting TRUSTEE at phone number or email address.

Attorney MID's client files will be disposed of by court order if not picked up by date.

Ex. 6

ACKNOWLEDGEMENT OF RECEIPT OF FILE

I, CLIENT, hereby acknowledge that I have received my file materials from the office of Attorney MID in the matter of case name and number.

I understand that Attorney MID has [become incapacitated/died/disappeared] and is unable to continue representing me. I have been notified that I should retain substitute counsel immediately to handle any ongoing legal matters in which I am involved.

This the _____ day of _____, 20__.

Printed Name

Signature

Address

Telephone

FOR OFFICE USE:

Form of identification presented: _____

Date of identification: _____

Approved by: _____

Ex. 7

IN RE: ATTORNEY MID,
ATTORNEY AT LAW

MOTION FOR ORDER
ALLOWING DISBURSEMENT
OF CLIENT FUNDS

NOW COMES the trustee of the law practice of Attorney MID, an incapacitated/deceased/disappeared attorney, and respectfully request the court enter an order permitting the disbursement of certain funds being held in the trust/business account of MID Attorney MID. In support of their motion, the trustee show as follows:

- 1) On or about date, trustee was appointed trustee of the law practice of Attorney MID.
- 2) Following the appointment, the undersigned trustee took possession of records relating to the attorney trust and business accounts maintained by Attorney MID at bank, account number # for the purpose of determining the ownership of the funds in the accounts.
- 3) The trustee's review of the accounts reflects that the following sums are owed to former clients of Attorney MID and others from the sums on deposit in the trust account:

Payee	Amount Due	For

Total \$\$

- 4) Despite their efforts, he trustee has been able to determine the owners of the remaining \$\$ in the trust and business accounts of Attorney MID.
- 5) The trustee has not received notice of any claim from any former client of Attorney MID or any other individual or entity.

WHEREFORE, the trustee hereby moves the court to enter an order permitting the trustee to disburse to the former clients and other persons the funds in the amounts listed in 3) above and to escheat the remaining funds to the State of Wisconsin.

This the _____ day of _____, 20____.

TRUSTEE
SB #
ADDRESS
PHONE #

Ex. 8

IN RE: ATTORNEY MID,
ATTORNEY AT LAW

ORDER
ALLOWING DISBURSEMENT
OF CLIENT FUNDS

The matter is before the court on a motion for an order disbursing certain funds held in the bank accounts of Attorney MID. Based upon the motion, the court finds as follows:

- 1) Attorney MID became incapacitated/died/disappeared on or about date, leaving no partners or associates capable of winding down his law practice.
- 2) On or about date, TRUSTEE was appointed trustee of the law practice of Attorney MID.
- 3) Following the appointment of TRUSTEE as trustee of the law practice of Attorney MID, the trustee took possession of records relating to the attorney trust and business accounts maintained by Attorney MID at banks, account numbers #.
- 4) The trustee reviewed the trust and business account records for the purpose of determining the ownership of the funds in the account.
- 5) The trustee's reviews found that the following sums are owed to former clients of Attorney MID and others from the sums on deposit in the trust and business accounts:

Payee	Amount Due	For

Total \$\$

- 6) The trustee has been unable to determine the owners of the remaining \$\$ in the trust and business accounts of Attorney MID.

7) The trustee has not received notice of any claim from any former client of Attorney MID or any other individual or entity.

NOW THEREFORE, IT IS ORDERED, that:

1. TRUSTEE shall disburse the funds in Attorney MID's trust account and business to Attorney MID's former clients as determined by the trustee's review of the relevant records.
2. The remaining funds shall escheat to the State of Wisconsin

This the _____ day of _____, 20_____.

DATE

By the Court:

Circuit Judge Br. X

Ex. 9

Name
Personal Representative/Executor
Estate of [Deceased Attorney]
Address

Re: Notice of Pending Claim Against Estate of Attorney MID

Dear Personal Representative/Executor:

As you may know, I have been appointed trustee of the law practice of Attorney MID for the purpose of winding down their practice in an orderly manner. A copy of the order is enclosed. Please accept this letter as notice that I intend to apply to the court for compensation from the estate of Attorney MID for my services as trustee, pursuant to SCR 12.03(1)(e).

Please feel free to call if you have questions or wish to discuss this matter. Thank you very much.

Sincerely yours,

TRUSTEE, Trustee
Law Practice of Attorney MID

Ex. 10

IN RE: ATTORNEY MID,
ATTORNEY AT LAW

PETITION FOR ORDER
DISCHARGING TRUSTEE

NOW COMES, TRUSTEE, trustee of the law practice Attorney MID, and petitions the Court for an order discharging them as trustee. In support of the petition, TRUSTEE respectfully shows:

1. On DATE, the court appointed TRUSTEE as trustee of the law practice of Attorney MID for the purpose of obtaining possession of files belonging to Attorney MID's clients, securing funds held in Attorney MID's trust and business accounts, obtaining Attorney MID's trust and business account records, and protecting the interests of the current and former clients of Attorney MID.

2. The undersigned Trustee has now taken all reasonable steps within their power to fulfill their obligations as trustee. They have returned or attempted to return all client files to their rightful owners. They have secured funds held in Attorney MID's trust and business accounts and identified or attempted to identify the persons to whom those funds belong.

3. The undersigned Trustee has reviewed Attorney MID's clients files. An inventory of the client files is attached as Exhibit A.

4. The undersigned Trustee has distributed files to a number of Attorney MID's current and former clients. The Trustee has distributed all client files to the appropriate person. A list of the files which have been returned to Attorney MID's clients is attached hereto as Exhibit B.

5. Several of Attorney MID's clients, have not picked up their files, despite receiving notice from the Trustee to do so. The Trustee now has in their possession NUMBER current and former client files wherein the Trustee received no instructions regarding the. A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.

6. A proposal for storage or disposition of the remaining files needs to be included here, for example: The Trustee has indicated that they are willing to store the remaining closed files at their law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging him as trustee, at which time they would destroy any unclaimed files.

7. The undersigned Trustee has disbursed all funds from any trust and/or fiduciary accounts held by Attorney MID to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.

8. Any unclaimed funds have escheated to the state.

9. The undersigned Trustee has submitted a summary of his time and expenses incurred in serving as trustee of the law practice of Attorney MID. The summary of their time and expenses is attached hereto as Exhibit E. In carrying out his duties as trustee, the undersigned Trustee has provided services and incurred expenses in the total amount of \$\$.

WHEREFORE, the undersigned Trustee respectfully requests the court to enter an order as follows:

1. Discharging them as trustee of the law practice of Attorney MID;
2. Allowing them to retain the unclaimed files of clients of Attorney MID's for one year of the date of this order, after which time the Trustee is authorized to destroy any unclaimed files [or any alternative proposal for disposition of files]; and
3. Finding that the Trustee is entitled to reasonable compensation for their services and reimbursement of expenses incurred while serving as trustee of the law practice of Attorney MID in the amount of \$\$.

This the ___ day of _____, 20_____.

TRUSTEE, Trustee of the
Law Practice of Attorney MID

EXHIBIT A

List of Clients to Whom Letters Requesting Pick Up of File Were Sent

NAME	DATE

EXHIBIT B

List of Files Distributed to Clients of Attorney [MID](#)

NAME	DATE DELIVERED TO CLIENT

List of Files Being Held by Trustee

NAME	CASE

EXHIBIT D

Order Approving Disbursements And Accounting of Disbursements

NAME	AMOUNT	DATE

EXHIBIT E

Statement of Service Rendered by Trustee
of Law Practice of Attorney MID

Service	Date	Time Spent
---------	------	------------

TOTAL HOURS x \$\$\$ per hour

TOTAL \$\$\$

Expense	Date	Amount
---------	------	--------

TOTAL \$\$\$

Ex. 11

IN RE: ATTORNEY MID,
ATTORNEY AT LAW

ORDER
DISCHARGING TRUSTEE

THIS MATTER coming before the court on a motion of the trustee herein for an order discharging the trustee of the law practice of Attorney MID, the Court makes the following:

FINDINGS OF FACT

1. On DATE, the court appointed TRUSTEE as trustee of the law practice of Attorney MID for the purpose of obtaining possession of files belonging to Attorney MID's clients, securing funds held in Attorney MID's trust and business accounts, obtaining Attorney MID's trust and business account records, and protecting the interests of the current and former clients of Attorney MID.

2. The Trustee has now taken all reasonable steps within their power to fulfill their obligations as trustee. They have returned or attempted to return all client files to their rightful owners. They have secured funds held in Attorney MID's trust and business accounts and identified or attempted to identify the persons to whom those funds belong.

3. The Trustee has reviewed Attorney MID's clients files. An inventory of the client files is attached as Exhibit A.

4. The Trustee has distributed files to a number of Attorney MID's current and former clients. The Trustee has distributed all client files to the appropriate person. A list of the files which have been returned to Attorney MID's clients is attached hereto as Exhibit B.

5. Several of Attorney MID's clients, have not picked up their files, despite receiving notice from the Trustee to do so. The Trustee now has in their possession NUMBER current and former client files wherein the Trustee received no instructions regarding the. A list of the files which have not been claimed by the clients is attached hereto as Exhibit C.

6. A proposal for storage or disposition of the remaining files needs to be included here, for example: The Trustee has indicated that they are willing to store the remaining closed files at their law offices located at <address>, and make the files available to the respective clients or their legal representatives should they wish to retrieve them for a period of one year from the date of any order discharging him as trustee, at which time they would destroy any unclaimed files.

7. The Trustee has disbursed all funds from any trust and/or fiduciary accounts held by Attorney MID to the appropriate persons. An order approving said disbursements is attached hereto as Exhibit D and an accounting of said disbursements is attached thereto.

8. Any unclaimed funds have escheated to the state

9. The Trustee has submitted a summary of their time and expenses incurred in serving as trustee of the law practice of Attorney MID. The summary of their time and expenses is attached hereto as Exhibit E. In carrying out his duties as trustee, the Trustee has provided services and incurred expenses in the total amount of \$\$.

Based upon the foregoing FINDINGS OF FACT, the Court enters the following:

CONCLUSIONS OF LAW

1. Trustee, trustee of the law practice of Attorney MID, has taken all reasonable steps in their power to fulfill their obligations as trustee of the law practice of Attorney MID, to obtain the return of all client files, and to disburse all funds in Attorney MID's trust or fiduciary accounts.

2. The Trustee is entitled to an order discharging them as trustee of the law practice of Attorney MID.

3. The Trustee is entitled to reasonable compensation for their services rendered and reimbursement of expenses incurred while serving as trustee of Attorney MID's law practice in the amount of \$\$.

4. Allowing them to retain the unclaimed files of clients of Attorney MID's for one year of the date of this order, after which time the Trustee is authorized to destroy any unclaimed files [or any alternative proposal for disposition of files];

WHEREFORE it is hereby ORDERED as follows:

1. TRUSTEE is hereby discharged as trustee of the law practice of Attorney MID.

2. TRUSTEE is hereby authorized to retain the unclaimed files of clients of Attorney MID's for one year of the date of this order, after which time the Trustee is authorized to destroy any unclaimed files [or any alternative proposal for disposition of files];

3. TRUSTEE is entitled to reasonable compensation for their services and reimbursement of expenses incurred while serving as trustee of the law practice of Attorney MID in the amount of \$\$, to be paid by the Attorney MID [incapacity or disappearance]/the estate of Attorney MID [death].

This the ____ day of _____, 20 ____.

By the Court:

Circuit Judge Br. X