

A large, light blue watermark of the Indiana State Bar Association logo is centered on the page. It features a circle of stars above a balance scale.

INDIANA ATTORNEY SURROGATE RULE

BEST PRACTICES AND FORMS

INDIANA STATE BAR ASSOCIATION
2010



INDIANA STATE BAR ASSOCIATION

Serving the legal profession and the public

Members of the Indiana Bar:

The Indiana Supreme Court recently adopted the Attorney Surrogate Rule for the protection of clients of solo attorneys. The death, disability or occasional disappearance of solo practitioners has a serious effect on the lives of the attorney's clients. Prior to the adoption of the Attorney Surrogate Rule there was no formal means for local courts, other attorneys, family or the clients to obtain prompt and professional assistance.

The adoption of the rule for solo attorneys was not meant as a slur. Attorneys engaged in firms with two or more attorney owners, whether a partnership, professional corporation or other structures do not need such a rule. The surviving owner lawyer has fiduciary duties to the clients of the firm and must legally protect those clients. Solo attorneys, or attorneys who own a practice only with attorney employees, are unable to provide the same protection, by the nature of the practice.

After several years and several cases of attorney surrogates, it became apparent that guidelines, model forms and a review of the Rule were needed. ISBA President Bill Jonas appointed a special committee to review the Attorney Surrogate Rule, and this publication is the result of the committee's work.

Our committee is providing you with step by step guidance on procedures that should be followed if you accept the role of attorney surrogate, by designation of the solo or by appointment from the court. It also provides guidance for those who are contacted by family or clients of an attorney who needs a surrogate, with forms of petitions, notices and orders.

The committee has attempted to make the process easier by these guidelines. That is not an assurance that the process will be easy, or without controversy. Some affected attorneys will oppose the appointment of an attorney surrogate. Some of the attorney's clients may not be cooperative in retrieving their files. These are matters where good lawyering skills will be essential.

The committee also found that there are several areas where Attorney Surrogate Rule might be improved. We have offered suggestions for improvements to the Supreme Court Rules Committee, and you may wish to compare the materials in this book with the Attorney Surrogate Rule found in Admission and Discipline Rule 23, Section 27 to determine whether updates to the rule have been made.

On behalf of the Special Committee on the Attorney Surrogate Rule, we thank you for your willingness to serve the clients of the Indiana Bar as an attorney surrogate.

SPECIAL COMMITTEE ON
ATTORNEY SURROGATE RULE
Respectfully,

A handwritten signature in cursive script that reads "Ted A. Waggoner".

Ted A. Waggoner, Chair

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Clerk of the Supreme Court, Court of Appeals, and Tax Court

STATE OF INDIANA

ATTORNEY SURROGATE DESIGNATION

If you engage in the private practice of law in Indiana and do not practice solely as an employee of a partnership, limited liability company (LLC), professional corporation (PC), limited liability partnership (LLP), another lawyer, or an organization not engaged in the private practice of law, then pursuant to Admission and Discipline Rule 23 § 27(b)(1) you may designate a member in good standing of the Indiana Bar to act as your attorney surrogate should you become unable to practice law due to death, disappearance, disability, suspension, or disbarment, by mailing this completed and signed form to the address listed below.

Please type or print legibly.

FULL NAME:

BAR NUMBER:

I hereby designate the following member in good standing of the Indiana bar to act as my attorney surrogate pursuant to Admission and Discipline Rule 23 § 27 [NOTE: Partners, shareholders, owners, and other non-employee lawyers practicing with one or more members of the Indiana Bar within partnerships, LLCs, PCs, or LLPs should designate their Fiduciary Entity rather than a specific attorney—see Admis. Disc. R. 23 § 27(b)(2)]:

**SURROGATE
OR ENTITY:**

**BAR NUMBER
(if applicable):**

By signing below, I certify that the attorney surrogate listed above has agreed to this designation in writing and that we both have copies of the agreement in our possessions. (NOTE: Designation invalid without this certification.)

DATE:

SIGNATURE:

THIS FORM MAY NOT BE FAXED. AN ORIGINAL SIGNATURE MUST BE RECEIVED BY THE CLERK'S OFFICE.

Clerk of the Supreme Courts
Attn: Roll of Attorneys
402 West Washington Street, Room W062
Indianapolis, IN 46204

Section 27. Attorney Surrogates

(a) Definitions for purposes of this section only:

"Attorney Surrogate" means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an attorney surrogate for a lawyer.

"Court of competent jurisdiction" means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.

"Disabled" means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs the Lawyer's ability to practice law.

"Fiduciary Entity" means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.

"Lawyer" means a member of the Bar of this State who is engaged in the private practice of law in this State. "Lawyer" does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.

(b) Designation of Attorney Surrogate

(1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 2(b), a Lawyer may designate an attorney surrogate on the annual registration form provided by the Clerk of the Supreme Court by specifying the name, office address and residence address of the attorney surrogate and certifying that the attorney surrogate has agreed to the designation in a writing in possession of both the lawyer and the surrogate. The designation of an attorney surrogate shall remain in effect until revoked by either the designated attorney surrogate or the Lawyer designating the attorney surrogate. The Lawyer who designates the attorney surrogate shall notify the Clerk of the Supreme Court of any change of designated attorney surrogate within thirty (30) days of such change. The Clerk shall keep a list of designated attorney surrogates and their addresses.

(2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity in the attorney surrogate designation section of the Lawyer's annual registration form. Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no attorney surrogate shall be appointed for a Fiduciary Entity.

(3) Unless otherwise designated on the annual registration form required by Ind. Admission and Discipline Rule 23 § 21(D) pursuant to subsection (1) above, a Lawyer not practicing in a Fiduciary Entity will be deemed to designate a senior judge or other suitable member of the bar of this State in good standing appointed by a court of competent jurisdiction to perform the duties of an attorney surrogate.

(c) Role of Attorney Surrogate

(1) Upon notice that a Lawyer has:

(a) died;

(b) disappeared;

(c) become disabled; or

(d) been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26 any interested person (including a local bar association) or a designated attorney surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an attorney surrogate.

(2) A copy of the verified petition shall be served upon the Lawyer at the address on file with the Clerk of the Supreme Court of Indiana or, in the event the Lawyer has died, upon the personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition), determine whether there is an occurrence under (a), (b), (c) or (d), and an attorney surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an attorney surrogate should be appointed then the court shall appoint as attorney surrogate either the designated attorney surrogate as set forth pursuant to subsection (b)(1), a suitable member of the Bar of this State in good standing or a senior judge.

(3) Upon such appointment, the attorney surrogate may:

(a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;

(b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;

(c) apply for extensions of time pending employment of replacement counsel by the client;

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

(e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;

(f) arrange for the surrender or delivery of clients' papers or property;

(g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;

(h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and

(i) do such other acts as the court may direct to carry out the purposes of this section.

(4) If the attorney surrogate determines that conflicts of interest exist between the attorney surrogate's clients and the clients of the Lawyer, the attorney surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney surrogate shall take no action with regard to those cases or files

(d) Jurisdiction of Court

A court of competent jurisdiction that has granted a verified petition for appointment under this section shall have jurisdiction over the files, records and property of clients of the

Lawyer and may make orders necessary or appropriate to protect the interests of the Lawyer, the clients of the Lawyer and the public. The court shall also have jurisdiction over closed files of the clients of the Lawyer and may make appropriate orders regarding those files including, but not limited to, destruction of the same.

(e) Time Limitations Suspended.

Upon the granting of a verified petition for appointment under this section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

(f) Applicability of Attorney-Client Rules.

Persons examining the files and records of the law practice of the Lawyer pursuant to this section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this section. The attorney-client privilege shall apply to communications by or to the attorney surrogate to the same extent as it would have applied to communications by or to the Lawyer. However, the attorney surrogate relationship does not create an attorney/client relationship between the attorney surrogate and the client of the Lawyer.

(g) Final Report of Attorney Surrogate; Petition for Compensation; Court Approval.

When the purposes of this section have been accomplished with respect to the law practice of the Lawyer, the attorney surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the attorney surrogate. The attorney surrogate may also file with the court a petition for reasonable fees and expenses in compensation for performance of the attorney surrogate's duties. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a final order to that effect and discharging the attorney surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the attorney surrogate. The amount of fees and expenses allowed shall be a judgment against the Lawyer or the estate of the Lawyer. The judgment is a lien upon all assets of the Lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this section. The judgment lien is subordinate to nonpossessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

(h) Immunity

Absent intentional wrongdoing, an attorney surrogate shall be immune from civil suit for damages for all actions and omissions as an attorney surrogate under this section. This immunity shall not apply to an employment after acceptance of representation of a client with the agreement of the client under subsection (c)(3)(h) above.

Attorney Surrogate Guidebook

Introduction

Indiana Admission and Discipline Rule 23, §27 (hereinafter, all rules and/or citations discussed refer to the Ind. Admission and Discipline Rules unless otherwise indicated), provides members of the bar with a meaningful avenue to protect clients of legal practices with one lawyer having ownership interest in the practice from problems that arise with the death, disability, or suspension of the sole owner from the practice of law (hereinafter referred to as “affected practitioner”). The rule provides clients of an affected practitioner several benefits. These benefits include:

1. Notification to clients of the death or disability of their attorney by the Attorney Surrogate and an orderly process for disposition of client files, client property, and transfer of files as directed by clients and/or the court. Rule 23, §27(c)(3).
2. Automatic extension of statutes of limitations; deadlines; etc., to and including the 120th day after the date of the filing of a Verified Petition for Appointment of Attorney Surrogate. Rule 23, §27(e). (The 120-day rule is discussed more fully in Section K.)

In addition, Rule 23, §27, also provides unique protections for the lawyer who accepts the responsibility of handling the practice of the affected practitioner. The attorney accepting the responsibility is referred to in the rule as the “Attorney Surrogate.” The protections for the Attorney Surrogate include:

1. Immunity (except from intentional wrongdoing) from civil suit for damages for all actions and omissions as an Attorney Surrogate. Rule 23, §27 (h). (This qualified immunity is discussed in Section N.)
2. A mechanism for payment of reasonable fees and expenses associated with the work of the Attorney Surrogate to be paid from the estate or assets of the affected practitioner. Rule 23, §27(g).

It is important to note that Ind. Admission and Discipline Rule 23, §27, is primarily focused on the best interests of the clients of the affected practitioner, the protection of the Attorney Surrogate, and the procedures necessary to involve the judiciary to oversee the process. The interests of the affected practitioner or a deceased practitioner’s estate, while accounted for in very general terms (See Rule 23, §27(d)), are protected to a much lesser degree. Therefore, the rule does not discuss in any great detail how to handle the business interests of the affected practitioner in her practice. In this regard, the rule appears to treat the affected practitioner’s clients and practice as a liability that needs to be managed through an orderly “wind down” rather than an asset that has value. Thus, in some cases, attorneys and judges alike, attempting to invoke the Attorney Surrogate provisions, might find themselves in conflict with either the affected practitioner or her estate. The disposition of any dispute at that fundamental level is beyond the confines of this guidebook. Rather, this guidebook provides a basic review of the Attorney Surrogate process and provides practical answers to many questions that will arise

during the course of the process. Additionally, Appendix A contains a complete copy of the Attorney Surrogate provisions contained in the Indiana Admission and Discipline rules for ease of reference. Appendix B contains sample forms to utilize throughout the process that obviously should be tailored to meet specific needs of the parties.

Basic Review of Attorney Surrogate Process

The Attorney Surrogate rule is implicated when the sole lawyer/owner of an ongoing legal practice becomes unable to competently practice law either through death or incapacity (i.e., disbarment; suspension of license; mental issues). The basic concept is to provide a method for another lawyer to step into the practice, protect client interests, and distribute the files for proper handling while maintaining confidentiality and the attorney client privilege.

Pursuant to the Attorney Surrogate rule, the affected practitioner may have formally designated another lawyer to be responsible for taking on the role of the Attorney Surrogate. Therefore, the first thing a lawyer should do if she is contemplating the need to invoke the Attorney Surrogate role in relation to another attorney's practice is contact the Clerk of the Indiana Supreme Court to determine whether the affected practitioner has already formally appointed someone to act as the Attorney Surrogate. If so, she should consider contacting the "appointed" Attorney Surrogate to discuss the situation and get the process started. Regardless of whether the affected practitioner has appointed an Attorney Surrogate for her practice, it is important to note that any interested party (including local bar associations; other attorneys; clients, etc.) may file a petition to start the Attorney Surrogate process.

The Attorney Surrogate process is started by filing a Verified Petition for the Appointment of an Attorney Surrogate in the county Court where the affected practitioner has "a principal office." The petition must be served on the affected practitioner or the personal representative of the estate for the affected practitioner. The Court must set a hearing within ten days to decide whether the appointment of an Attorney Surrogate is appropriate. Assuming the Court finds it is necessary to appoint an Attorney Surrogate, the Court may appoint the individual designated with the Clerk of the Indiana Supreme Court by the affected practitioner to serve in the role of Attorney Surrogate, or a suitable member of the bar in good standing, or a senior judge. It should be noted that the Court will most likely appoint the individual designated as the Attorney Surrogate with the Clerk of the Indiana Supreme Court as a "first choice". This is especially true because the process of designating an individual to serve as an Attorney Surrogate requires that the affected practitioner certify that the designated attorney has agreed to serve in the capacity of an Attorney Surrogate.

Once it is determined who should serve as the Attorney Surrogate, the Rule gives broad powers to the Attorney Surrogate to wind down the practice with Court oversight. The powers of the Attorney Surrogate include reviewing files, contacting clients, filing motions to protect clients from deadlines, returning client papers and property, managing trust accounts, and making referrals for on-going client matters. Further, to the extent that the Attorney Surrogate identifies a conflict of interest in relation to a particular file or client matter of the affected practitioner the rule also provides a mechanism for the Court to oversee the transfer of the file or

client matter to another lawyer. Throughout the Attorney Surrogate process, the Attorney Surrogate receives limited immunity from suit for all actions taken in her role as Attorney Surrogate. At the end of the process, the Attorney Surrogate must file a final report and an accounting of all funds and property which came into the custody of the Attorney Surrogate. The Court, after review, will issue an order discharging the Attorney Surrogate from additional duties.

The time entailed in managing the wind down of a practice may be significant depending on the size of the affected practitioner's practice. The Attorney Surrogate Rule provides some opportunity for the Attorney Surrogate to receive compensation for her work. In particular, the Attorney Surrogate may file a petition for reasonable fees and expenses relating to her work as Attorney Surrogate. The amount of the fees and expenses, once approved by the Court, become a judgment lien against the property of the affected practitioner or her estate retroactive to the date of the filing of the verified petition for appointment of the Attorney Surrogate.

It is important to note that aside from the somewhat limited assurance of payment for work as an Attorney Surrogate outlined above, the Attorney Surrogate is able to accept and handle files of the affected practitioner. Therefore, there is the possibility that while the judgment lien may not provide satisfactory remuneration for the work of the Attorney Surrogate, there is the possibility that the Attorney Surrogate could retain new clients as a result of her work as Attorney Surrogate. Of course, the immunity from damages relating to the work of the Attorney Surrogate described above is eliminated for actions taken after the Attorney Surrogate has formally accepted representation of a client.

Commonly Asked Questions About the Attorney Surrogate Process

The following commonly asked questions are organized in a fashion that will guide the reader through the Attorney Surrogate process in the order that one would expect the questions to arise during the normal course of an Attorney Surrogate's work. However, there are many questions left unanswered by the language of the rule and (given the infancy of the rule) there is no case law to help with the interpretation.

A. Who needs an Attorney Surrogate?

The affected practitioner needs an Attorney Surrogate when a qualifying event occurs (as described below) and the affected practitioner is or was employed in an environment where there is no other lawyer or group of lawyers with a pre-existing fiduciary duty to step in and handle the affected practitioner's cases. For example, lawyers who are associated as partners, in a general partnership or a limited liability entity organized to practice law where the other lawyers associated with the affected lawyer have a legal duty to take over the lawyer's client matters and handle them in a competent manner do not need Attorney Surrogates. See Rule 23, §27(b)(2). Likewise, a lawyer who employs one or more other lawyers is responsible for her employee's cases upon the occurrence of a qualifying event and the appointment of a Surrogate Attorney should not be necessary if a disabling event occurs to an employee lawyer. On the other hand,

the employing lawyer (i.e., sole owner of the practice) will require the appointment of an Attorney Surrogate should a qualifying event befall her even if she has employee lawyers working on her behalf at the time of the disabling event. Finally, a lawyer who is employed exclusively by a single client, such as in-house counsel, will not require an Attorney Surrogate because the client will be in a position to simply hire new counsel upon the occurrence of a qualifying event. The Attorney Surrogate rule may be invoked when a qualifying event happens to a practitioner (including a lawyer sharing space or expenses with one or more other lawyers) and individual lawyers with other lawyers as their employees. See Rule 23, §27(a) (“Lawyer” defined).

B. Does the Attorney Surrogate rule apply to situations even if the affected practitioner employs associates?

Possibly. As discussed above, in the event an affected practitioner is the sole owner of the legal practice then she will need an Attorney Surrogate even if she employs other lawyers. See Rule 23 §27(a). However, if the lawyer works with other “owners” of the practice, then she does not need an Attorney Surrogate. The Attorney Surrogate rule by its terms applies only to situations where a practitioner has become unable to practice law. See Rule 23, §27(b)(2).

C. When is an Attorney Surrogate necessary?

The Attorney Surrogate rule only applies to situations where the sole owner of a legal practice has (1) died; (2) disappeared; (3) become disabled¹; or (4) has been disbarred or suspended from the practice and has failed to take steps to protect her clients’ interests as required by Rule 23, §26, Rule 23, §27(c)(1).

There will be times where there may be a dispute as to whether the Attorney Surrogate process is appropriate. As will be discussed below, the affected practitioner and/or her estate must be given notice and an opportunity to be heard on the subject. Rule 23, §27(c)(2).

D. How does one become an Attorney Surrogate?

There are two ways one becomes an Attorney Surrogate.

First, the affected practitioner may have previously designated a member of the bar as an Attorney Surrogate. This is the preferred method. Pursuant to Rule 23, §27(b)(1), the practitioner may designate an Attorney Surrogate on the annual registration form provided by the Clerk of the Supreme Court. By completing the form, the practitioner certifies that the designated Attorney Surrogate has agreed in writing to perform the role of Attorney Surrogate.

Second, pursuant to Rule 23, §27(b)(3), if no Attorney Surrogate has been designated by the affected practitioner, the affected practitioner will be “deemed” to have designated a senior

¹ An attorney is “disabled” under this rule if she “has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs [the affected practitioners] ability to practice law. Rule 23, §27 (a).

judge or other suitable member of the bar in good standing appointed by a court to perform the duties of the Attorney Surrogate.

E. Who can start the Attorney Surrogate process?

“Any interested party” (including the local bar association and/or the affected practitioner’s duly designated Attorney Surrogate) may file a petition with the court to start the process. Rule 23, §27(c)(1). Also, a client who is left without access to a file or access to trust funds upon the occurrence of a qualifying event could initiate a proceeding.

F. How does one start the Attorney Surrogate process?

The process is started by the filing of a Verified Petition for Appointment of Attorney Surrogate. Rule 23, §27(c)(2). The petition must be served on the affected practitioner, if not deceased, at her address as maintained by the Clerk of the Supreme Court of Indiana and/or her personal representative, if the affected practitioner has died. *Id.*

The Attorney Surrogate, in addition to (or as part of) the Verified Petition for Appointment of Attorney Surrogate, should request a hearing with the court. According to Rule 23, §27(c)(2), the court must set a hearing within ten days of the date of service of the petition to determine whether an Attorney Surrogate should be appointed, as well as who should serve as the Attorney Surrogate.

Related Forms (Appendix B):

Form 1 – Verified Petition- use in situations in which the affected practitioner has died (which incorporates a request for hearing)

Form 2 – Verified Petition- use in situations in which the affected practitioner has disappeared, become disabled, disbarred or suspended from the practice of law (which incorporates a request for hearing)

Form 3 - Proposed Order on Hearing on Petition for Appointment of Attorney Surrogate if sent to Personal Representative of Deceased Attorney

Form 4 - Notice of Hearing on Petition for Appointment of Attorney Surrogate if sent to affected practitioner and/or other interested parties

Form 5 - Proposed Order Granting Petition for Appointment of Attorney Surrogate

G. In what court should one file the Verified Petition for Appointment of Attorney Surrogate?

The petition to start the Attorney Surrogate process may be filed in any county court of general jurisdiction (i.e., Circuit or Superior Court) in which the affected practitioner “maintains or has maintained a principal office.” Rule 23, §27(a). Presumably, in the relatively rare instance where a practitioner maintained two or more “principal” offices, one may be entitled to choose in which county to file. If the affected practitioner maintains a trust account, given a choice of counties, it would be prudent to file in the county where the affected practitioner conducts her trust account banking.

H. How quickly must an Attorney Surrogate be appointed?

There is no time limit for filing a petition to appoint a surrogate. However, because statutes of limitations and other jurisdictional time limits are extended 120 days from the date of filing the petition, not the date of the qualifying event, it is advised to file a petition promptly after the occurrence of a qualifying event to protect client matters where a jurisdictional deadline is looming.

I. What if someone files a Verified Petition for Appointment of Attorney Surrogate to handle a practice and the affected practitioner wants to contest it?

Pursuant to Rule 23, §27(c)(2), the court will set a hearing within ten days of the “service” of the Petition for Appointment of Attorney Surrogate. The sole issue for the affected practitioner to contest is whether there has been an “occurrence” of an event in which an Attorney Surrogate should be appointed under Rule 23, §27(c)(1). Since the affected practitioner is alive and has notice of the hearing, one of two issues could be addressed: Whether the affected practitioner is (1) disabled as defined by Rule 23, §27(a); or (2) suspended or disbarred and failed to comply with Rule 23, §26, which outlines duties when winding down a practice to protect clients.

J. What are the obligations of the Attorney Surrogate once appointed by the court?

(1) Inventory

The Attorney Surrogate is granted broad powers to inventory the affected practitioner’s practice including client files. Rule 23, §27(c)(3)(a). The Attorney Surrogate should initially perform an immediate review on the files attempting to identify those files in immediate need of attention. *Id.* The Attorney Surrogate is also granted broad powers to apply for extensions and file notices, motions and pleadings on behalf the clients of the affected practitioner in order to protect the clients’ interests. Rule 23, §27(c)(3)(c)-(d). It should be noted, though, that the Attorney Surrogate does not become the successor attorney for the affected practitioner’s clients unless the Attorney Surrogate and the client agree to the Attorney Surrogate’s representation as successor counsel.

(2) Notify clients/courts/other interested parties regarding the situation

(a) The Attorney Surrogate should notify all persons or entities who “appear to be clients” that the affected practitioner is unable to continue to represent them and that it may be in the clients’ best interests to obtain new counsel. Rule 23, §27(c)(3)(b).

Related Forms (Appendix B):

Form 6 - Notice of Appointment of Attorney Surrogate

Form 7 – Notice to [Lawyer]’s Clients on the Role of An Attorney Surrogate

Form 8 - Notice of Closing of the Law Office of Attorney

(b) The attorney may also notify all persons whom the Attorney Surrogate believes may be affected by the appointment of an Attorney Surrogate. In this regard, the Attorney Surrogate should consider notifying local courts, the local bar association, and any opposing counsel who can be identified from the files regarding the situation related to the affected practitioner. Rule 23, §27(c)(3)(e). Publication of a notice in a local newspaper may also be appropriate in order to provide adequate notice to interested persons.

(3) Manage the distribution or destruction of client files

The Attorney Surrogate must coordinate (and should document) the transfer of files to either the client or to new counsel appointed by the client. Rule 23, §27(c)(3)(f), (h). The destruction of client file materials without specific client consent requires court intervention. Rule 23, §27(d). In this regard, the Attorney Surrogate should identify closed files and seek permission to destroy the files from the court. It is necessary to note that throughout the process of destruction or transfer the Attorney Surrogate is duty bound to maintain client confidences consistent with Ind. Professional Conduct Rule 1.6. Importantly, the rule also provides that the attorney client privilege is maintained throughout the Attorney Surrogate relationship even though the Attorney Surrogate role does not automatically create an attorney client relationship between the Attorney Surrogate and the clients of the affected practitioner. Rule 23 §27(f).

It is important to note that with respect to destruction of documents the Attorney Surrogate rule does not place any additional requirement on the Attorney Surrogate to maintain closed files beyond what was required or expected of the affected practitioner. However, some files may contain documents that should be maintained for a long time beyond when the file is considered closed or inactive. For instance, the file may contain wills, trust documents, tax documents, adoption papers, or other important materials which may require special care or additional scrutiny. In those instances where the Attorney Surrogate has a question as to what treatment should be afforded to a particular type of document it is recommended that the Attorney Surrogate bring the issue before the court for decision.

Related Forms (Appendix B):

Form 9 - Petition for the Destruction of Closed Files by Attorney Surrogate

Form 10 - Proposed Order Allowing Destruction of Closed Files by Attorney Surrogate

Form 15 - Receipt for Client File

(4) Manage the affected practitioner's trust funds

The Attorney Surrogate, upon approval of the court, must manage the trust account consistent with Ind. Prof. Cond. R. 1.15(a) and take all appropriate actions with respect to said trust funds. The court should be intimately involved in the process. The Attorney Surrogate should never commingle her own trust account with the trust account of the affected practitioner. It is recommended that if there are any irregularities, discrepancies, or disputes arising out of or related to the affected practitioner's trust account, the Attorney Surrogate should bring the matter to the immediate attention of the court and seek instructions, including seeking authority to hire appropriate accounting personnel to account for all funds in trust.

Related Forms (Appendix B):

Form 13 - Petition for Collection of Trust Accounts by Attorney Surrogate

Form 14 - Proposed Order to Permit Attorney Surrogate to Control Trust Accounts

(5) Maintain client confidences

While the Attorney Surrogate role does not in and of itself create an attorney client relationship between the Attorney Surrogate and the clients of the affected practitioner, the Attorney Surrogate is required to maintain client confidences to the same extent as if there were an attorney client relationship. Interestingly, the Attorney Surrogate may make *in camera* disclosures to the court of what otherwise would be attorney client confidences if the disclosures are "necessary to carry out the purposes" of Rule 23, §27. Rule 23, §27(f)

K. What protections are there for clients with pending deadlines?

Once the Verified Petition for Appointment of Attorney Surrogate is granted, any applicable statutes of limitation, deadlines, time limits or return dates as it relates to the affected practitioner's clients (except requests for emergency relief) are automatically extended by the rule for 120 days from the date of filing of the Verified Petition for Appointment of Attorney Surrogate. However, it is important to note that to calculate the extension one does not add 120 days to every deadline. Rather, any deadline that would expire within the 120-day time frame is extended to the 120th day after the date of the filing of the Verified Petition for Appointment of Attorney Surrogate. Rule 23, §27(e). The Attorney Surrogate is encouraged to promptly screen and distribute files for active management to minimize reliance on the 120-day grace period provided by the rule. Importantly, however, the Attorney Surrogate does have a qualified immunity from suit for failing to meet a statute of limitations as long as the failure was not the result of an intentional act on the part of the Attorney Surrogate. See Rule 23, §27(h).

L. What should the Attorney Surrogate do if she discovers a conflict of interest between her client and a client of the affected practitioner?

The Attorney Surrogate should use great caution when inventorying files to not be exposed to files in which the Attorney Surrogate represents clients with conflicting interests. In the event of a conflict of interest, the Attorney Surrogate must immediately notify the court of the conflict of interest. The Attorney Surrogate is prohibited from taking any action with respect to the handling of that matter. Presumably, the court will direct the disposition of that file to another attorney. Rule 23, §27(c)(4).

M. Can the Attorney Surrogate become the lawyer for the affected practitioner's client?

Yes. Rule 23, §27(c)(2)(h), provides specifically that in the process of making client referrals and handling the disposition of file materials, the Attorney Surrogate may, with the agreement of the client, take on the representation of the client. Importantly, however, any immunity from civil suit (discussed in Section N) protecting the Attorney Surrogate related to that client is expressly nullified upon the Attorney Surrogate becoming successor counsel. Rule 23, §27(h).

N. Once the Attorney Surrogate is appointed, what role does the court play?

The court's role is similar to its role in the realm of supervised estate administration. Basically, the court's role is to oversee, facilitate, and direct the Attorney Surrogate as she works through the issues presented in maintaining (and perhaps winding down) a law practice. Indeed, Rule 23, §27(d), grants the court broad equitable powers to make such orders as are necessary or appropriate to protect the interests of the affected practitioner, the clients of the affected practitioner, and the general public.

O. How is the role of the Attorney Surrogate concluded?

Similar to estate administration, the Attorney Surrogate must file a final accounting of all funds and property coming into the custody of the Attorney Surrogate. In this regard, the Attorney Surrogate should explain in general the administrative work that she performed, including the notices sent out, the pleadings filed, etc. She must also identify all the files and client property that she reviewed or maintained, and describe what happened to the files and client property (i.e., transferred, destroyed, returned to the client, returned to the court, etc.). She must also account for the affected practitioner's trust funds, if any. Notice of the filing of the final report and accounting must be served as directed by the court. Although it is not expressly provided in the rules, given the magnitude of the issue, it is recommended that the final report and accounting be set for hearing so that all issues surrounding the work of the Attorney Surrogate can be fully vetted. Rule 23, §27(g).

Related Forms (Appendix B):

Form 16 - Attorney Surrogate's Final Report and Accounting

Form 17 - Affidavit in Lieu of Vouchers

Form 18 - Order Setting Final Report and Accounting for Hearing

Form 19 - Notice of Hearing on Final Report and Accounting

Form 20 - Order Approving Attorney Surrogate's Final Report and Accounting

Form 21 - Supplemental Report and Distribution

Form 22 - Order Approving Supplemental Report and Distribution and Discharging Attorney Surrogate

P. Does the Attorney Surrogate get paid for her work as Attorney Surrogate?

Yes. The Attorney Surrogate is entitled to reasonable fees and expenses related to her performance as Attorney Surrogate. She may file requests for payment throughout the process to cover expenses and should file a request for payment with the final accounting. The court will direct Attorney Surrogate as to who is required to receive notice of the fee request. Minimally, it should be served on the affected attorney or the personal representative of a deceased attorney's estate or the guardian of a disabled attorney's estate. Once the court establishes a reasonable fee, the order granting the fee will be a judgment against the affected practitioner and/or the estate of the affected practitioner. The judgment operates as a lien on all assets of the affected practitioner and/or the estate of the affected practitioner. The lien shall be retroactive to the date of the filing of the Verified Petition for Appointment of Attorney Surrogate. Rule 23, §27(g).

As written, this provision does not create an ideal situation for the Attorney Surrogate. In other words, there is no guarantee of payment. In the case of the deceased lawyer, the Attorney Surrogate should consider making a timely claim in the deceased lawyer's probate estate assuming one is opened. It is also recommended to the extent possible that the Attorney Surrogate work with the estate to minimize the possibility of a misunderstanding of the role of the Attorney Surrogate.

Related Forms (Appendix B):

Form 23 – Petition for Allowance of Interim/Final Fees and Reimbursement of Expenses

Form 24 – Order of Allowance of Interim/Final Fees and Reimbursement of Expenses

Q. What happens if the affected practitioner's clients sue the Attorney Surrogate for her role in helping to deal with the practitioner's practice?

The Attorney Surrogate has a qualified immunity from civil suit. Absent intentional wrongdoing, an Attorney Surrogate is immune from civil suit for damages related to errors and

omissions as an Attorney Surrogate. However, if the Attorney Surrogate decides to represent that affected practitioner's client, and that client sues the Attorney Surrogate for her actions after the lawyer/client relationship is consummated, the immunity is waived. Rule 23, §27(h).

FORMS FOR ATTORNEY SURROGATE

Form #1	Verified Petition for Appointment of Attorney Surrogate [death situation]
Form #2	Verified Petition for Appointment of Attorney Surrogate [disappearance/disabled/disbarred situation]
Form #3	Order on Hearing of Petition for Appointment of Attorney Surrogate
Form #4	Order Approving Petition for the Appointment of an Attorney Surrogate
Form #5	Notice of Hearing of Petition for Appointment of Attorney Surrogate
Form #6	Notice of Appointment of Attorney Surrogate and Closing of Law Office of [Attorney] [Publication Form]
Form #7	Notice to [Attorney's] Clients on the Role of Attorney Surrogate
Form #8	Notice of the Closing of the Law Office of Attorney
Form #9	Petition for Destruction of Closed files by Attorney Surrogate
Form #10	Order Allowing Destruction of Closed Files by Attorney Surrogate
Form #11	Petition for Allowance of Fees and expenses of Attorney Surrogate
Form #12	Order Allowing Fees and Expenses of Attorney Surrogate
Form #13	Petition for Obtaining Control of Trust Accounts by Attorney Surrogate
Form #14	Order Granting Control of Trust Account(s) to Attorney Surrogates
Form #15	Receipt for client file
Form #16	Attorney Surrogate's Final Report and Accounting

Form #17	Affidavit in lieu of Vouchers
Form #18	Order Setting Final Report and Accounting for Hearing
Form #19	Notice of Hearing on Final Report and Accounting
Form #20	Order Approving Attorney Surrogate's Final Report and Accounting
Form #21	Supplemental Report of Distribution
Form #22	Order Approving Supplemental Report of Distribution and Discharging Attorney Surrogate
Form #23	Petition for Allowance of Interim Final Fees and Reimbursement of Expenses
Form #24	Order of Allowance of Interim Final Fees and Reimbursement of Expenses

STATE OF INDIANA)
) SS: IN THE _____ COUNTY _____ COURT
COUNTY OF _____) CAUSE NO: _____

IN THE MATTER OF)
)
)

[Name of Attorney)
for whom Surrogate)
is being Petitioned])

ATTORNEY NO: _____)
)
)

[Name of Petitioning)
Attorney])

VERIFIED PETITION FOR APPOINTMENT OF ATTORNEY SURROGATE

Comes now _____ [name petitioner], an attorney and a member of the Indiana Bar in good standing, and petitions the Court, pursuant to the provisions of the Supreme Court Admission and Discipline Rule 23, Section 27, to be appointed by the Court as the Attorney Surrogate for [name attorney for whom surrogate is being sought]. That in support of this request, the Petitioner advises the Court as follows:

1. On or about the _____ day of _____, 20____, _____ [name attorney], _____ [disappeared / became disabled / was disbarred or suspended] and is currently unable to practice law and incapable of managing the affairs of _____ [his/her] clients.
2. At the time of this occurrence, _____ [name attorney] was actively engaged in the practice of law, maintaining a law office at _____ [state street address], _____ [name city], Indiana, in the county of _____.
3. At the time of this occurrence, _____ [name attorney] was a member of the Indiana Bar, whose state bar number was _____. That the attorney was also a member of the local _____ [name county] county bar.
4. As a result of this occurrence _____ [name attorney] is incapable of managing the affairs of _____ [his/her] law office and attending to _____ [his/her] client's legal interests, wherein the _____ [disappearance / disability / disbarment / suspension] of _____ [name attorney] constitutes an occurrence under Section 27(c)(1) _____ [(a) / (b) / (c)], which requires the appointment of an attorney surrogate to act as custodian of the law practice of _____ [name attorney].

5. The petitioner, _____ [name petitioner], is an attorney licensed to practice law in the state of Indiana and a member in good standing of the Indiana Bar, whose state bar number is _____. That the petitioner maintains _____ [his/her] law office at _____ [state street address], _____ [name city], Indiana.

6. Section 27(c)(3)(a) through (i) specifies the duties of an attorney surrogate, which includes the following:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) arrange for the surrender or delivery of client's papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

7. Section 27(4) of Admission and Discipline Rule 23 provides as follows: If the attorney surrogate determines that conflicts of interest exist between the attorney surrogate's clients and the clients of the Lawyer, the attorney surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney surrogate shall take no action with regard to those cases or files.

8. Section 27(e) of Admission and Discipline Rule 23 provides as follows: Upon the granting of a verified petition for appointment under this section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

9. there is a necessity for the appointment of an attorney surrogate to provide aid and assistance for the clients of _____ [name attorney]. That pursuant to Section 27 (c)(2) a copy of this verified petition shall be served on _____ [name attorney], at _____ [state street address], _____ [city], Indiana, _____ [zip code].

WHEREFORE, _____ [name petitioner] requests the Court to set this matter for hearing; to designate who is to receive notice of the hearing, and upon hearing the evidence on this matter appoint the petitioner, _____ [name petitioner] as attorney surrogate to take possession of the files, records and trust accounts of _____ [name attorney] and to facilitate and effectuate the proper transfer of files and records, to notify the clients of _____ [name attorney] with regard to obtaining replacement counsel, to file notices, motions and pleadings on pending cases that require immediate attention, to perform any other duties ordered by this Court, and to report back to the Court regarding _____ [his/her] actions when the duties are completed, and for all other relief which is proper in the premises.

[Name Petitioner]

I HEREBY AFFIRM, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

[Name Petitioner]

NOTES TO FORM

If the attorney for whom you are seeking the petition has died, then refer to Form #2.

6. Prior to the demise of _____ [name deceased attorney] the decedent executed an Attorney Surrogate Designation on the _____ day of _____, 20____, and that said designation is on file with the Clerk of the Supreme Court. A copy of which is attached to this petition.

7. Section 27(c)(3)(a) through (i) specifies the duties of an attorney surrogate, which includes the following:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) arrange for the surrender or delivery of client' papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

8. Section 27(4) of Admission and Discipline Rule 23 provides as follows: If the attorney surrogate determines that conflicts of interest exist between the attorney surrogate's clients and the clients of the Lawyer, the attorney surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney surrogate shall take no action with regard to those cases or files.

9. Section 27(e) of Admission and Discipline Rule 23 provides as follows: Upon the granting of a verified petition for appointment under this section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

10. A personal representative has been appointed for the estate of _____ [name deceased attorney]. That the court appointed personal representative is _____ [name personal representative]. That pursuant to Section 27 (c)(2) a copy of this verified petition shall be served on _____ [name personal representative], at _____ [state street address], [city], Indiana, _____ [zip code].

WHEREFORE, _____ [name petitioner] requests the Court to set this matter for hearing; to designate who is to receive notice of the hearing, and upon hearing the evidence on this matter appoint the petitioner, _____ [name petitioner] as attorney surrogate to take possession of the files, records and trust accounts of _____ [name deceased attorney] and to facilitate and effectuate the proper transfer of files and records, to notify the clients of _____ [name deceased attorney] with regard to obtaining replacement counsel, to file notices, motions and pleadings on pending cases that require immediate attention, to perform any other duties ordered by this Court, and to report back to the Court regarding _____ [his/her] actions when the duties are completed, and for all other relief which is proper in the premises.

[Name Petitioner]

I HEREBY AFFIRM, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

[Name Petitioner]

NOTES TO FORM

If the attorney for whom you are seeking the petition has disappeared, is disabled or has been disbarred or suspended then refer to Form #1.

STATE OF INDIANA)
) SS: IN THE _____ COUNTY _____ COURT
COUNTY OF _____) CAUSE NO: _____

IN THE MATTER OF)
)
)

[Name of Attorney)
for whom Surrogate)
is being Petitioned])
)
ATTORNEY NO: _____)
)
)

[Name of Petitioning)
Attorney])
)

**ORDER ON HEARING OF PETITION FOR APPOINTMENT OF
ATTORNEY SURROGATE**

Comes now _____ [name petitioner] who having filed a Petition for the Appointment as Attorney Surrogate for _____ [name attorney for whom surrogate is being petitioned] pursuant to Supreme Court Admission and Discipline Rule 23, Section 27, and submits _____ [his/her] petition to the Court, and the Court pursuant to Section 27(c)(2) finds that the Petition for the Appointment of an Attorney Surrogate should be set for hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a hearing on said verified Petition for the Appointment of an Attorney Surrogate shall be held in the _____ County _____ Court on the _____ day of _____, 20____, at _____ o'clock ____ [AM/PM], at which time the decedent's personal representative, _____ [name personal representative] is ordered to appear. That said personal representative shall be served notice of this hearing by certified mail on the following individuals:

[List individuals and their addresses to whom notice should be served.]

All of which is ORDERED this _____ day of _____, 20____.

Judge of the _____ County

STATE OF INDIANA) **Form#4**
) SS: IN THE _____ COUNTY _____ COURT
COUNTY OF _____) CAUSE NO: _____

IN THE MATTER OF)
)
)

[Name of Attorney)
for whom Surrogate)
is being Petitioned])
)
ATTORNEY NO: ____)
)

[Name of Petitioning)
Attorney])

**ORDER APPROVING PETITION FOR THE APPOINTMENT OF
AN ATTORNEY SURROGATE**

Comes now _____ [name petitioner], who having filed ____ [his/her] Verified Petition for the Appointment of an Attorney Surrogate, which petition is in the following words and figures, to-wit:

(H. I.)

And the Court, having examined said petition and being duly advised in the premises, now finds that said petition should be granted and does hereby grant the same.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED BY THE COURT that the _____ [death / disappearance / disability / disbarment / suspension] of _____ [name attorney] constitutes an occurrence under Supreme Court Admission and Discipline rule 23, Section 27(c)(1)(a), which requires the appointment of an attorney surrogate to act as custodian of [name attorney] 's law practice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that pursuant to the provisions of Section 27(c)(3)(a)-(i), the duties of an attorney surrogate include the following:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;

- (b) notify persons and entities who appear to be clients of the Attorney that it may be in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) arrange for the surrender or delivery of client' papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

IT IS FURTHER ORDERED that pursuant to Section 27(e), any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the clients of _____ [name attorney], (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT THAT _____ [name petitioner] is now appointed to serve as attorney surrogate to act as the custodian of the law practice of _____ [name attorney] and to facilitate and effectuate the proper transfer and inventory of files, notification to the clients of _____ [name attorney], and to perform any and all other duties, pursuant to Supreme Court Admission and Discipline Rule 23, Section 27, as ordered by this Court.

All of which is ORDERED this ____ day of _____, 20__.

Judge of the ____ County

Form#5

STATE OF INDIANA)
) SS: IN THE _____ COUNTY _____ COURT
COUNTY OF _____) CAUSE NO: _____

IN THE MATTER OF)
)
)

[Name of Attorney)
for whom Surrogate)
is being Petitioned])
)
ATTORNEY NO: _____)
)

[Name of Petitioning)
Attorney])

**NOTICE ON HEARING OF PETITION FOR APPOINTMENT
OF ATTORNEY SURROGATE**

Pursuant to Supreme Court Admission and Discipline Rule 23, Section 27(c)(2), the
Petition for the Appointment of an Attorney Surrogate is set for hearing by the _____ County
Court on the ____ day of _____, at _____ [AM/PM].

The Petition filed by _____ [name petitioner] accompanies this notice. You are requested
to appear at this hearing and state any objections or concerns that you may have with regard to this
petition.

This notice is being served on the following individuals by Certified Mail:

[List Individual and their Mailing Address]

[Name Petitioner sending Notice]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Appointment of Attorney Surrogate and Notice of the Hearing on said petition has been duly served Certified Mail, postage prepaid, this ____ day of ____, 20__ upon the following individuals:

[Insert names and addresses]

This ____ day of ____, 20__.

[Name of Attorney]

This Instrument Prepared by:

[Complete with attorney information]

STATE OF INDIANA)
) SS: IN THE _____ COUNTY _____ COURT
 COUNTY OF _____) CAUSE NO: _____

IN THE MATTER OF)
)
)
)
 [Name of Attorney)
 for whom Surrogate)
 is being Petitioned])
)
 ATTORNEY NO: ____)
)
)
)
 [Name of Petitioning)
 Attorney])

NOTICE OF APPOINTMENT OF ATTORNEY SURROGATE

AND CLOSING OF LAW OFFICE OF [name attorney]

IN THE _____ COURT OF _____ COUNTY, INDIANA.

In the matter of the Request for the Appointment of an Attorney Surrogate for _____
 [name of attorney for whom Surrogate is being petitioner].

Cause Number _____.

Notice is hereby given that on the ____ day of _____, 20____, _____ [name petitioner]
 filed a petition in the _____ County, _____ Court, for the appointment of an Attorney Surrogate on
 behalf of _____ [name of attorney for whom surrogate is being petitioned]. That on the ____ day
 of _____, 20____, the _____ [county] County _____ [Circuit/Superior] Court appointed
 [name of attorney surrogate] as Attorney Surrogate for _____ [name of attorney].

This publication is to notify all of _____'s [name attorney for whom surrogate was
 appointed] clients, former clients, and any interested persons that their legal file is now in the
 possession of _____ [name surrogate attorney], whose law office is located at _____ [list
 street address], _____, Indiana, Phone Number: _____; or e-mail address or office at
 _____ [list e-mail address].

As Attorney Surrogate on behalf of _____ [name attorney for whom surrogate was appointed] it is my duty to proceed as follows:

- (a) Take possession of and examine the files and records of the practice, and obtain information as to any pending matters which may require attention;
- (b) Notify persons and entities who appear to be clients of [name attorney for whom surrogate was appointed] that they need to obtain replacement counsel;
- (c) Apply for extensions of time pending the employment of replacement counsel by the client;
- (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not been obtained;
- (e) Give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) Arrange for the surrender or delivery of clients' papers or property;
- (g) As approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) Deliver the file to the client, make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) Perform such other acts as the court may direct.

Upon the Court's granting of the Petition for the Appointment of the Surrogate Attorney, any applicable statute of limitations deadline, time limit or return date for filing as it relates to any of _____'s [name attorney for whom surrogate was appointed] clients will be extended automatically for 120 days from the filing of the petition.

IT IS YOUR RESPONSIBILITY TO OBTAIN REPLACEMENT COUNSEL TO TIMELY PROCEED WITH YOUR CASE. YOU NEED TO OBTAIN REPLACEMENT COUNSEL IMMEDIATELY, AS VARIOUS STATUTES OF LIMITATION COULD RESULT IN THE DISMISSAL OF YOUR CAUSE OF ACTION OR THE DENIAL OF YOUR CLAIM. FAILURE TO OBTAIN REPLACEMENT COUNSEL ON OR BEFORE ____ [fill in date of 120 days from date petition was filed] MAY RESULT IN LEGAL HARM TO YOUR CASE, THROUGH BEING DEFAULTED OR THROUGH OTHER ADVERSE LEGAL ACTION BEING TAKEN AGAINST YOU.

When you select your new attorney, please provide _____ [name surrogate attorney] with written authority to transfer your file to the new attorney. In the alternative, you may also contact the law office of [name surrogate attorney] at _____ [list street address], _____ [city], Indiana, to make arrangements to pick up a copy of your file. Please contact the office to make arrangements to retrieve your file prior to picking it up. You should call _____ [state phone number] to make arrangements to pick up your file or if you have any questions with regard to this notification.

Dated at Indianapolis, Indiana, this ____ day of ____, 20__.

[name surrogate attorney]
Surrogate Attorney for _____
[name attorney for whom surrogate was appointed].

Notes to Form:

It is suggested that this notice be published in the newspaper of general circulation at least two (2) times once for each consecutive week.

**NOTICE TO _____ [LAWYER]'S CLIENTS ON THE
ROLE OF AN ATTORNEY SURROGATE**

An Attorney Surrogate has the following duties and responsibilities:

- (a) Take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) Notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;
- (c) Apply for extensions of time pending employment of replacement counsel by the client;
- (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) Give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) Arrange for the surrender or delivery of clients' papers or property;
- (g) As approved by the court, take possession of all trust accounts subject to Indiana Rules of Professional Conduct 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) Deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) Do such other acts as the court may direct to carry out the purposes of this section.

PLEASE NOTE: The appointment of an Attorney Surrogate does not create an attorney/client relationship between you and the Attorney Surrogate.

**NOTICE OF THE CLOSING OF THE
LAW OFFICE OF _____ (LAWYER)**

This is to advise that the law office of _____ [Lawyer} closed on or about _____ [date], due to [his/her] [death, disappearance, becoming disabled, disbarment/suspension].

On _____ [date of appointment], the _____ County _____ Court appointed _____ to act as Attorney Surrogate on behalf of _____ [Lawyer]. The role of the Attorney Surrogate is enclosed herewith.

In addition to the appointment of a Surrogate Attorney, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to _____'s [Lawyer's] clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of the filing of the petition and before the extended date.

It is your responsibility to obtain replacement counsel to handle your case immediately. You may select any attorney that you wish. The _____ [local bar] also provides a lawyer referral service, which can be reached at _____ [local bar telephone number]. The appointment of an Attorney Surrogate does not create an attorney/client relationship between you and the Attorney Surrogate.

FAILURE TO OBTAIN REPLACEMENT COUNSEL MAY RESULT IN LEGAL HARM TO YOUR CASE, THROUGH BEING DEFAULTED OR THROUGH OTHER ADVERSE LEGAL ACTION BEING TAKEN AGAINST YOU.

When you have selected a replacement attorney, please provide _____, Attorney Surrogate, with written authority to transfer your file to the new attorney. If you prefer, you may pick up your file from the office of the Attorney Surrogate at the address below. In order to pick up your file, you must show an acceptable form of photographic identification. Please contact the office to make arrangements to retrieve your file prior to picking it up.

[Provide Attorney Surrogate's name, address and telephone number.]

STATE OF INDIANA)
) SS:
COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
_____ [Attorney])
)
Attorney No. _____)
)
_____,)
Attorney Surrogate.)

**PETITION FOR DESTRUCTION OF CLOSED FILES
BY ATTORNEY SURROGATE**

COMES NOW _____, as Attorney Surrogate for _____ [Attorney], who being duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. _____, was appointed by the Court as the Attorney Surrogate of _____ [Attorney] on _____ [date of appointment].

2. The Attorney Surrogate has reviewed the files of _____ [Attorney] and has determined that the following files are closed.

[List files to be destroyed]

3. More than ninety (90) days have lapsed since a notice to these clients has been sent to their last known address requesting that the client retrieve the file, or since the first publication of the Notice of Appointment of Attorney Surrogate in a newspaper of general circulation in the county of the principal office of _____ [Attorney], and no response from these clients has been received.

4. The listed files have been reviewed for original documents that should not be destroyed under law. [*Note: See Attorney Surrogate Guidebook J.(3) for a discussion of such documents.*]

5. The Attorney Surrogate believes the most appropriate method for the destruction of the files listed in Paragraph #2 above should be _____ [commercial shredding with XYZ, burning, wiping or destruction of electronic media, etc.]. The Attorney Surrogate believes that this method of destruction will assure protection of client confidentiality.

WHEREFORE, _____, Attorney Surrogate of _____ [Attorney] prays that

the Court order that the listed files may be destroyed and for all other relief which is proper in the premises.

_____, as Attorney Surrogate
of _____ [Attorney]

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the forgoing Petition for Destruction of Closed Files by Attorney Surrogate was mailed via U.S. Postal Service, this ____ day of _____, 20__, to:

[List all individuals/entities for whom the Court has ordered notice be given. The Attorney, their guardian, their trustee, or the personal representative of their estate may have an interest in the preservation of files.]

[Name]
[Address]
Attorney No. _____
[Telephone]

STATE OF INDIANA)
) SS:
COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
_____ [Attorney])
)
Attorney No. _____)
)
_____,)
Attorney Surrogate.)

**ORDER ALLOWING DESTRUCTION OF CLOSED FILES
BY ATTORNEY SURROGATE**

Comes now _____, as Attorney Surrogate for _____ [Attorney], and submits [his/her] Petition for Destruction of Closed Files by Attorney Surrogate, which petition is on file with the Court and a part of the Court's record.

And the Court, having examined said petition and being duly advised, now finds that the facts stated therein are true, that the Court should allow the destruction of the closed files listed in the petition.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the closed files of _____ [Attorney] listed in the petition be destroyed.

All of which is ORDERED this ____ day of _____, 20__.

Judge of the _____ County _____ Court

STATE OF INDIANA)
) SS:
 COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
 _____ [Attorney])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

**PETITION FOR ALLOWANCE OF FEES AND EXPENSES
OF ATTORNEY SURROGATE**

COMES NOW _____, as Attorney Surrogate for _____ [Attorney], who being duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. _____, was appointed by the Court as the Attorney Surrogate of _____ [Attorney] on _____ [date of appointment], and said role of Attorney Surrogate has been fulfilled.
2. The services of the Attorney Surrogate included, among other things, _____ [list services provided].
3. The Attorney Surrogate has not received any payment for the services rendered on behalf of _____ [Attorney], and believes that just and reasonable compensation to the Attorney Surrogate, _____, for [his/her] services is the sum of \$_____ in that [he/she] has approximately _____ hours of services rendered in attending to [his/her] duties as Attorney Surrogate, plus \$_____ in expense reimbursement (see Exhibit "A").

WHEREFORE, _____, Attorney Surrogate of _____ [Attorney] prays that the Court fix and determine the fees and expenses for the Attorney Surrogate's services rendered in connection with said surrogacy, order the same to be paid, order payment to be a judgment against _____ [Attorney or Estate of Attorney], make said judgment a lien upon all assets of _____ [Attorney or Estate of Attorney] retroactive to the date of filing the verified petition for appointment of an attorney surrogate, and for all other relief which is proper in the premises.

 _____, as Attorney Surrogate
 of _____ [Attorney]

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the forgoing Petition for Allowance of Fees and Expenses for Attorney Surrogate was mailed via U.S. Postal Service, this ____ day of _____, 20__, to:

[List all individuals/entities for whom the Court has ordered notice be given. The Attorney, their guardian, their trustee, or the personal representative of their estate should be given notice.]

[Name]

[Address]

Attorney No. _____

[Telephone]

STATE OF INDIANA)
) SS:
 COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
)
 _____,
 Attorney Surrogate.)

ORDER ALLOWING FEES AND EXPENSES OF ATTORNEY SURROGATE

Comes now _____, as Attorney Surrogate for _____ [Lawyer], and submits [his/her] Petition for Allowance of Fees and Expenses for Attorney Surrogate, which petition is on file with the Court and a part of the Court's record.

And the Court, having examined said petition and being duly advised, now finds that the facts stated therein are true, that the Court should fix and allow the fees and expenses for services performed by the Attorney Surrogate, and that said fees and expenses should be allowed and ordered paid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that there be, and hereby is, allowed to _____, for [his/her] services as Attorney Surrogate for _____ [Lawyer], the sum of \$_____, that sum shall be paid, that this judgment is a lien upon all assets of _____ [Lawyer or Estate of Lawyer] retroactive to the date of filing the verified petition for appointment of an attorney surrogate, that this judgment is subordinate to nonpossessory liens and security interests created prior to its taking effect, and that said judgment may be foreclosed upon in the manner prescribed by law.

All of which is ORDERED this ____ day of _____, 20__.

 Judge of the _____ County _____ Court

STATE OF INDIANA)
) SS:
 COUNTY OF _____)
) CAUSE NO.

IN THE MATTER OF)
 _____ [Attorney])
)
 Attorney No. _____)
)
)
 _____,)
 Attorney Surrogate.)

**PETITION FOR OBTAINING CONTROL OF TRUST ACCOUNTS
 BY ATTORNEY SURROGATE**

COMES NOW _____, as Attorney Surrogate for _____ [Attorney], who being duly sworn upon oath, respectfully petitions and shows the Court as follows:

1. _____, was appointed by the Court as the Attorney Surrogate of _____ [Attorney] on _____ [date of appointment].

2. The Attorney Surrogate has reason to believe that _____ [name of financial institution having trust account] has trust account(s) subject to Indiana Rules of Professional Conduct 1.15(a) of _____ [Attorney].

3. As Attorney Surrogate, _____, has been charged with the duty to take all appropriate actions regarding these accounts pursuant to Indiana Admission and Discipline Rule 23, Section 27, (c)(3)(g).

WHEREFORE, _____, Attorney Surrogate of _____ [Attorney] prays that the Court order _____ [name of financial institution having trust account] to turn over control of all trust accounts subject to Indiana Rules of Professional Conduct 1.15(a) to _____, as Attorney Surrogate, for Attorney Surrogate to take all appropriate actions regarding these accounts, and for all other relief which is proper in the premises.

 _____, as Attorney Surrogate
 of _____ [Attorney]

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the forgoing Petition for Obtaining Control of Trust Accounts by Attorney Surrogate was mailed via U.S. Postal Service, this ____ day of _____, 20__, to:

[List all individuals/entities for whom the Court has ordered notice be given. This should include, at a minimum, the affected financial institutions and the Attorney, their guardian, their trustee, or the personal representative of their estate.]

[Name]

[Address]

Attorney No. _____

[Telephone]

(Note: In order to give those who are served with the petition an opportunity to object, the proposed order states that the petition was filed at least ten (10) days prior to the order being signed.)

STATE OF INDIANA)
) SS:
 COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
 _____ [Attorney])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

**ORDER GRANTING CONTROL OF TRUST ACCOUNT(S)
TO ATTORNEY SURROGATE**

Comes now _____, as Attorney Surrogate for _____ [Attorney], and submits [his/her] Petition to Obtain Control of Trust Accounts by Attorney Surrogate, which petition is on file with the Court and a part of the Court's record. The petition being filed ten (10) days or more prior the date of this order and no objection has been filed.

And the Court, having examined said petition and being duly advised, now finds that the facts stated therein are true and that the Court should grant the Attorney Surrogate control over all trust accounts subject to Indiana Rules of Professional Conduct 1.15(a).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that _____ [name of financial institution having trust account] transfer control of all trust accounts in the name of _____ [Attorney] to _____ as Attorney Surrogate and for Attorney Surrogate to take all appropriate actions with respect to such trust accounts.

All of which is ORDERED this ____ day of _____, 20__.

 Judge of the _____ County _____ Court

STATE OF INDIANA) IN THE _____ COUNTY _____ COURT
) SS:
 COUNTY OF _____) CAUSE NO.

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

RECEIPT FOR CLIENT FILE

I, _____ [name of client] of _____ [client address], hereby acknowledge that I have received my file materials that were in the possession of my former attorney _____ [Lawyer], from the offices of _____, the Attorney Surrogate.

I understand that an attorney-client relationship has not been established with the Attorney Surrogate and that the Attorney Surrogate does not represent me.

I understand that _____ [Lawyer] has [died, disappeared, became disabled, was disbarred/suspended]. I have been notified that I should hire substitute counsel immediately to handle any ongoing legal matters in which I am involved.

Received this _____ day of _____, 20 ____.

 Signature

 Printed Name

 Telephone Number

FOR OFFICE USE:

Form of ID Presented: _____

Date of Identification _____

Approved By: _____

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO. _____

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

ATTORNEY SURROGATE'S FINAL REPORT AND ACCOUNTING

COMES NOW _____ [Name Attorney Surrogate], as Attorney Surrogate for _____ [Lawyer], who being duly sworn upon oath, respectfully reports and shows the Court as follows:

1. CONFIDENTIALITY: This report includes information that must be protected from unauthorized disclosure. Therefore, the following exhibits are presented on green paper under Ind. R. Trial P. 5(G): [Identify green paper exhibits.

2. APPOINTMENT: The Attorney Surrogate was appointed by the Court as the Attorney Surrogate of _____ [Lawyer] on _____ [date of appointment].

3. ADMINISTRATION:

A. Possession of _____ [Lawyer]'s files and records. The Attorney Surrogate took possession of all of _____ [Lawyer]'s files and records on _____, 20____, and obtained information about pending matters in _____ [Lawyer]'s law practice that required attention.

B. Notices to _____ [Lawyer]'s clients. On _____, 20____, the Attorney Surrogate gave notice to obtain replacement counsel to the people and entities named in Exhibit A, attached hereto and incorporated herein, who appeared to have composed _____ [Lawyer]'s clientele.

C. Applications for extensions of time. The Attorney Surrogate filed applications for extensions of time pending employment of replacement counsel for the cases described by abbreviated caption and case number in Exhibit B, attached hereto and incorporated herein.

D. Notices, motions and pleadings. The Attorney Surrogate filed notices, motions and pleadings as described in Exhibit C, attached hereto and incorporated herein, where jurisdictional time limits were involved and other legal counsel had not yet been obtained.

E. Notices third parties. The Attorney Surrogate gave notice of administration of _____ [Lawyer]'s law practice to the people and entities named in Exhibit D, attached hereto and incorporated herein, who appeared to be appropriate persons and entities to receive such notice.

F. Surrender and delivery of papers and files. The Attorney Surrogate surrendered or delivered to those people named in Exhibit E, attached hereto and incorporated herein, all of _____ [Lawyer]'s papers and files that are shown in Exhibit E.

G. Destruction of papers and files. The Attorney Surrogate destroyed all of _____ [Lawyer]'s papers and files that are shown in Exhibit F, attached hereto and incorporated herein, in conformity with the Indiana State Bar Association's Attorney Surrogate Guidebook.

H. Possession of _____ [Lawyer]'s trust accounts. The Attorney Surrogate took possession of all of _____ [Lawyer]'s trust accounts, subject to Prof. Cond. R. 1.15(a) and acted with respect to those accounts as shown in Exhibit G attached hereto and incorporated herein.

I. Delivery of files to clients, referrals of clients to replacement counsel, and acceptance of representation. The Attorney Surrogate delivered files to clients as shown in Exhibit H; referred clients to replacement counsel as shown in Exhibit I; and accepted representation as shown in Exhibit J, all attached hereto and incorporated herein.

J. Compliance with Court directions. The Attorney Surrogate carried out other acts as directed by the Court and described in summary in Exhibit K attached hereto and incorporated herein.

4. ACCOUNT: The Attorney Surrogate attaches hereto and makes a part hereof as Exhibit L, a schedule showing the original inventory of _____ [Lawyer]'s assets used in _____ [Lawyer]'s law practice and additional receipts received by the Attorney Surrogate; Exhibit M, a schedule showing disbursements made by Attorney Surrogate; and Exhibit N, a schedule showing a recapitulation setting forth therein the total assets available for distribution to _____ [Lawyer]'s claimants, the legatees and devisees entitled thereto.

WHEREFORE, _____, as Attorney Surrogate for _____ [Lawyer], submits this affirmed final report and account and prays that after due notice as follows:

Form #16

1. That this report and account may be settled and allowed by the Court and the amounts stated herein approved by the Court;

2. The distributions heretofore made should be confirmed;

3. The Court designate, determine and confirm the persons to whom final distribution is to be made and the amounts to which each person is entitled;

4. The Court enter an order authorizing the Attorney Surrogate to distribute the balance of the assets available for final distribution to the respective legatees and devisees; and

5. Tthe Court grant such additional relief as may be just and proper in the premises.

, as Attorney Surrogate for _____
[Lawyer]

_____ [Attorney Surrogate] affirms, under the penalties for perjury, that the above and foregoing representations are true.

[Attorney Surrogate Signature]
Attorney Registration No. _____

EXHIBIT A

**PEOPLE AND ENTITIES TO WHOM NOTICE WAS GIVEN
OBTAIN REPLACEMENT COUNSEL**

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT B

**APPLICATIONS FOR EXTENSIONS OF TIME PENDING
EMPLOYMENT OF REPLACEMENT COUNSEL**

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT C

**NOTICES, MOTIONS AND PLEADINGS WHERE
JURISDICTIONAL TIME LIMITS WERE INVOLVED AND
OTHER LEGAL COUNSEL HAD NOT YET BEEN OBTAINED**

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT D

**NOTICE TO THIRD PARTIES OF ADMINISTRATION OF
_____ [LAWYER]'S LAW PRACTICE**

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT E

SURRENDER AND DELIVERY OF PAPERS AND FILES

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT F

DESTRUCTION OF PAPERS AND FILES

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit must be filed on green paper under Ind. R. Trial P. 5(G)]

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit must be filed on green paper under Ind. R. Trial P. 5(G)]

[illegible]

EXHIBIT H

DELIVERY OF FILES TO CLIENTS

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT I

REFERRALS OF CLIENTS TO REPLACEMENT COUNSEL

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT J

ACCEPTANCE OF REPRESENTATION

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT K

COMPLIANCE WITH COURT DIRECTIONS

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT L

**INVENTORY OF ASSETS USED IN _____ [LAWYER]'S
LAW PRACTICE AND ADDITIONAL RECEIPTS RECEIVED BY
THE ATTORNEY SURROGATE**

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit
must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT M

DISBURSEMENTS MADE BY ATTORNEY SURROGATE

[Note: Consult Ind. Admin. R. 9(G)(1) to determine whether this exhibit must be filed on green paper under Ind. R. Trial P. 5(G)]

EXHIBIT N

RECAPITULATION

Beginning Balance, as shown in the Inventory of assets filed on _____,
20____ (the "Inventory") \$_____.

Total Receipts + \$_____

Total Disbursements - _____

\$_____

Balance of Attorney Surrogate's fee - _____

Total Recapitulation \$_____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

IN THE _____ COURT
CAUSE NO. _____

IN THE MATTER OF)
_____ [Lawyer])
)
Attorney No. _____)
)
_____,)
Attorney Surrogate.)

AFFIDAVIT IN LIEU OF VOUCHERS

_____, as Attorney Surrogate for _____ [Lawyer], affirms and states that the disbursements listed in said final accounting covering the period designated therein were paid from the assets of _____ [Lawyer]'s law practice, and a receipt or voucher for each item is held in the records of the Attorney Surrogate.

Dated this _____ day of _____, 20_____.

, as Attorney Surrogate for _____
[Lawyer]

_____ [Attorney Surrogate] affirms, under the penalties for perjury, that the above and foregoing representations are true.

[Attorney Surrogate Signature]
Attorney Registration No. _____

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO. _____

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

ORDER SETTING FINAL REPORT AND ACCOUNTING FOR HEARING

Comes now _____, as Attorney Surrogate for _____ [Lawyer], and submits the affirmed Final Report and Accounting,

And the Court, having examined said report and being duly advised in the premises, now finds that the following people and entities are entitled to notice of the Final Report and Accounting:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____
_____	_____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Final Report and Accounting is set for hearing on _____, 20_____, at _____:_____.M., and the Attorney Surrogate is directed to issue notice to the people and entities named above by the form of notice that is attached to this order as an exhibit.

Dated this _____ day of _____, 20_____.

_____, as Judge of the
 _____ Court, Division

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO.

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

NOTICE OF HEARING ON FINAL REPORT AND ACCOUNTING

Notice is hereby given that _____, as Attorney Surrogate for _____ [Lawyer], filed a Final Report and Account of the administration of _____ [Lawyer]'s law practice in the office of the Clerk of the _____ Court, and that that the same will come up for examination and action in a hearing set for that Court to consider the Final Report and Account on _____, 20_____, at _____:_____.M., in the _____ Court, located at _____, _____, Indiana. All persons and entities interested in Final Report and Account the wishing to be heard in the hearing are required to appear in said Court and show cause, if any there be, why said report and account should not be approved.

 [Attorney Surrogate Signature]
 Attorney Registration No. _____

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO.

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

NOTICE OF HEARING ON FINAL REPORT AND ACCOUNTING

Notice is hereby given that _____, as Attorney Surrogate for _____ [Lawyer], filed a Final Report and Account of the administration of _____ [Lawyer]'s law practice in the office of the Clerk of the _____ Court, and that that the same will come up for examination and action in a hearing set for that Court to consider the Final Report and Account on _____, 20_____, at _____:_____.M., in the _____ Court, located at _____, _____, Indiana. All persons and entities interested in Final Report and Account the wishing to be heard in the hearing are required to appear in said Court and show cause, if any there be, why said report and account should not be approved.

 [Attorney Surrogate Signature]
 Attorney Registration No. _____

STATE OF INDIANA)
) SS:
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO.

IN THE MATTER OF)
 _____ [Lawyer])
)
 Attorney No. _____)
)
 _____,)
 Attorney Surrogate.)

ORDER APPROVING ATTORNEY SURROGATE'S FINAL REPORT AND ACCOUNTING

This cause came to be heard on the _____ day of _____, 20____, upon the final report and account filed by _____, as Attorney Surrogate for _____ [Lawyer],

And it appearing that no objections were filed thereto and the Court, being fully advised in the premises, now finds as follows:

1. Due notices of the filing of the said report and account and of the hearing on the same were given to all persons interested in the estate and the same are now properly before the Court for final action thereon.

2. The Attorney Surrogate was appointed by the Court as the Attorney Surrogate of _____ [Lawyer] on _____ [date of appointment].

3. The matters and things stated in the said account and petition are true and the Attorney Surrogate has accounted for all of the files, papers, clients, trust accounts, and assets of _____ [Lawyer]'s law practice coming into the Attorney Surrogate's hands.

4. The Attorney Surrogate's distributions of files, papers, clients, trust accounts, and assets of _____ [Lawyer]'s law practice described in the Attorney Surrogate's report and accounting should be confirmed.

5. The following persons are entitled to receive the following amounts:

<u>Name</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

and distribution should be made to the above named persons as set forth above and as indicated in the said final account.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The final report and account of the Attorney Surrogate is hereby in all things approved, settled, and confirmed.

2. The distributions of files, papers, clients, trust accounts, and assets of _____ [Lawyer]'s law practice described in the Attorney Surrogate's report and accounting are hereby confirmed and approved.

3. The Attorney Surrogate is hereby directed to distribute the balance of the files, papers, clients, trust accounts, and assets of _____ [Lawyer]'s law practice as follows:

<u>Name</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

6. The Attorney Surrogate is hereby directed to file a supplemental report showing that the Attorney Surrogate has complied with the terms of this order and that the Attorney Surrogate has in all things carried out the provisions of this decree.

Dated this _____ day of _____, 20____.

_____, as Judge of the
 _____ Court, Division

STATE OF INDIANA)
) SS:
COUNTY OF _____)
IN THE _____ COURT
CAUSE NO.

IN THE MATTER OF)
_____ [Lawyer])
)
Attorney No. _____)
)
_____,)
Attorney Surrogate.)

SUPPLEMENTAL REPORT OF DISTRIBUTION

_____, as Attorney Surrogate for _____ [Lawyer], affirms and respectfully shows the Court as follows:

1. Pursuant to the Order Approving Attorney Surrogate's Final Report and Accounting entered on the _____ day of _____, 20____, the Attorney Surrogate made distribution as therein directed and attaches hereto copies of checks evidencing such distribution as set forth in the decree.

2. The Attorney Surrogate has in all things carried out and performed the acts required by the Court's order.

WHEREFORE, _____, as Attorney Surrogate for _____ [Lawyer], respectfully prays that this supplemental report of distribution be approved and that the Attorney Surrogate be released and discharged from any further liabilities, duties, and responsibilities as such Attorney Surrogate.

, as Attorney Surrogate for _____
[Lawyer]

Form #21

_____ [Attorney Surrogate] affirms, under the penalties for perjury,
that the above and foregoing representations are true.

[Attorney Surrogate Signature]

Attorney Registration No. _____

Form # 22

STATE OF INDIANA)
) SS:
COUNTY OF _____)

IN THE _____ COURT
CAUSE NO. _____

IN THE MATTER OF)
_____ [Lawyer])
)
Attorney No. _____)
)
_____,)
Attorney Surrogate.)

**ORDER APPROVING SUPPLEMENTAL REPORT
OF DISTRIBUTION AND DISCHARGING ATTORNEY SURROGATE**

Comes now _____, as Attorney Surrogate for
_____ [Lawyer], and submits the affirmed Supplemental Report of Distribution and
petition for discharge,

And the Court, having examined said report and being duly advised in the premises, now
finds that the allegations contained in the said report are true and that the report should be
granted and the estate terminated and the Attorney Surrogate discharged.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the
Supplemental Report of Distribution filed by _____, as Attorney Surrogate for
_____ [Lawyer], is in all respects approved and that _____, as
Attorney Surrogate, is hereby discharged from any further liability, responsibility, and duties.

Dated this _____ day of _____, 20 ____.

_____, as Judge of the

_____ Court, Division _____

STATE OF INDIANA)
) SS.
 COUNTY OF _____)

IN THE _____ COURT
 CAUSE NO. _____

IN THE MATTER OF)
)
 _____)
 [Name of Attorney for whom)
 Surrogate is being Petitioned])
)
 ATTORNEY NO.: _____)
)
 _____)
 [Name of Petitioning Attorney])

PETITION FOR ALLOWANCE OF INTERIM FINAL FEES
 AND REIMBURSEMENT OF EXPENSES

Comes now _____ [name attorney surrogate], the court appointed
 Attorney Surrogate of _____ [name attorney], who being duly sworn
 upon _____ [his/her] oath, respectfully petitions the court as follows:

1. Your petitioner was appointed Attorney Surrogate over _____
 [name attorney] on the _____ day of _____, 20____, by this Court.

2. Upon being appointed Attorney Surrogate the petitioner proceeded in
 accordance with the provisions of Indiana Admission and Discipline Rule 23 Section 27
 and performed the following duties:

- (a) took possession of and examine over _____ [state number]
 files and miscellaneous records of the law practice, and obtained
 information as to any pending matters which required attention;
- (b) notified persons and entities who appeared to be clients of the Lawyer that
 they needed to obtain replacement counsel;
- (c) applied for extensions of time pending employment of replacement
 counsel by the client on cases requiring the same;
- (d) filed notices, motions and pleadings on behalf of the client where
 jurisdictional time limits were involved and other legal counsel had not yet
 been obtained;

- (e) gave notice to appropriate persons and entities who may be affected, other than clients, that an attorney surrogate had been appointed;
- (f) arranged for the surrender or delivery of client's papers or property and have tender over _____ [state number] files directly to clients or their new legal counsel;
- (g) pursuant to the court's order, took possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15 (a), and took appropriate actions with respect to such accounts;
- (h) delivered files to the client and made referrals to replacement counsel with the agreement of the client.

3. In addition to the above listed duties performed, your petitioner rendered the following additional services as Attorney Surrogate: _____
[describe special services which situation required you to render].

4. The petitioner to date has incurred the following expenses in order to perform the duties required by their appointment;

- (a) Postage in the total amount of \$ _____;
- (b) Certified Mailings in the total amount of \$ _____;
- (c) Publication fees in the total amount of \$ _____;
- (d) Xeroxing Expenses in the total amount of \$ _____;
- (e) Long distance phone charges and faxing expenses in the total amount of \$ _____.

The petitioner now requests to be reimbursed for the above listed expenses in the total amount of \$ _____.

5. The petitioner to date has expended _____ [state number] hours with regard to the services rendered as Attorney Surrogate for _____ [name attorney] and has received no compensation to date. That your petitioner would request that the Court order an interim payment of these fees pending finalization of this matter. [That the petitioner has attached to this petition as "Exhibit A" an itemized time schedule and listing of the expenses incurred to date.]

WHEREFORE, _____ [name attorney surrogate] as Attorney Surrogate over _____ [name attorney] prays that the Court order payment of the expenses incurred in this matter along with payment of interim fees for the services rendered to date, and for all other relief which is proper in the premises.

[Name Attorney Surrogate]

Attorney Registration No. _____

I hereby affirm, under the penalties of perjury, that the foregoing representations are true to the petitioner's knowledge.

[Name Attorney Surrogate]

Attorney Registration No. _____

Notes to Form:

If attorney surrogate was ordered to take possession of affected practitioner's operating business account, then you may want to consider requesting that interim fees and expenses be ordered paid from that account. Consider inserting the following paragraph:

6. That the attorney surrogate was previously ordered by the Court to take possession of the operating business account of _____ [name attorney] held with _____ [name bank]. That this business account has a current balance of _____ [state amount] from which these fees and reimbursement of expenses can be paid, and the petitioner would request that the court order payment from this account.

STATE OF INDIANA)
) SS.
COUNTY OF _____)

IN THE _____ COURT
CAUSE NO. _____

IN THE MATTER OF _____)
)
[Name of Attorney for whom)
Surrogate is being Petitioned])
)
ATTORNEY NO.: _____)
)
)
[Name of Petitioning Attorney])

ORDER OF ALLOWANCE OF INTERIM FINAL FEES
AND REIMBURSEMENT OF EXPENSES

Comes now _____ [name attorney surrogate]. Attorney Surrogate for _____ [name attorney] and submits _____ [his/her] verified Petition for Interim Fees and Reimbursement of Expenses, which petition is on file with the Court and a part of the Court's record.

And the Court, having examined said petition and being duly advised, now finds that the facts stated in the petition are true and that numerous duties have been performed by the Attorney Surrogate on behalf of _____ [name attorney] and expenses incurred in performing those duties.

That an interim fee should be ordered along with reimbursement of expenses incurred by the Attorney Surrogate. That a just and reasonable fee for the services rendered by _____ [name attorney surrogate] as Attorney Surrogate for _____ [name attorney] is \$ _____. That in addition the Attorney Surrogate is to be reimbursed expenses in the total amount of \$ _____. That the total amount of \$ _____ is allowed and ordered to be paid to the Attorney Surrogate, _____ [name attorney surrogate].

Dated this _____ day of _____, 20_____.

_____, as Judge of the

Court, Division _____