

CHECKING UP *or* CHECKING OUT

By Dianna M. Anelli

As attorneys, we know that we are responsible for our clients' files. We have no doubt that we are duty bound to continue representing our clients until the legal matter is concluded. We usually have every intention of doing so. Most of the time this is not an issue since this is our job, this is what we are trained to do, this is what we have chosen and this is part of the practice of law. Well, in recent days there are those attorneys who have been laid off from law firms. And then there are those partners recently voted off the island. Of course, there are those who cannot wait for full retirement (encompassing the vast majority, recently licensed or not, of the practicing bar). Then again, many of us relish the thought of a permanent vacation from the office. And occasionally a permanent vacation intentionally happens. But that is not really what I'm talking about.

What happens when things go awry, such as when an attorney checks out of

the practice of law without notice to the client and without providing a replacement? The client may not even know that the attorney has decided to discontinue practicing or that some other such thing has occurred making it impossible for the attorney to continue representation. What if really bad luck occurs and the attorney gets ill, has an accident, or dies? For lawyers practicing in law firms, whether large or small, this is not really an issue because the partners or attorney members ensure that the clients' files are reassigned. But what about the solo practitioner?

Luckily, the Supreme Court of Ohio has contemplated just this scenario and has presented a solution in the Supreme Court Rules for the Government of the Bar. Gov. Bar R. V, Section 8(F) addresses just this issue. It provides an available remedy where an attorney is suspended due to mental illness, cannot be found in the jurisdiction for sixty or more days, dies, refuses to meet or work with significant clients for sixty or more days, or fails to

comply with his or her duties under Section 8(E) (involving suspension from the practice of law). This Rule applies where there is not a partner, executor or other responsible person willing to conduct the attorney's affairs or assume responsibility. In that event, disciplinary counsel or the chair of a certified grievance committee of a local bar association may appoint one or more attorneys to inventory the files and take action necessary to protect the clients' interests. This may include reassigning current cases to another attorney. The appointed attorney may not disclose client information from the inventoried files that is protected by the attorney-client privilege or Rule 1.6 absent the written consent of the client. The appointed attorney also may not represent any of the clients whose files he or she inventories. However, upon application and approval by the Secretary of the Board of Commissioners on Grievances and Discipline, the appointed attorney may be paid from Attorney Registration funds.

Some insurance companies require a solo practitioner to designate an individual who will take on responsibility for the current files in the event that the attorney becomes incapacitated. The Ohio Bar Liability Insurance Company is one such insurer. In that instance, there is an individual willing to assume responsibility for the attorney's client files and Gov. Bar R. V(8)(F) has no application.

It is the rare case when an attorney decides not to practice law and simply leaves the jurisdiction or when he or she is incapacitated with no one willing or able to assist with client files. However, it is nice to know that we, as an organized bar, have alternatives for the rare instances in which such events do occur.



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