

## ADVANCE SUCCESSION REGISTRY

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### PROTECTING YOUR CLIENTS IF THE UNTHINKABLE HAPPENS

At the Columbus Bar Association (CBA), we know that no attorney likes to think about events that might abruptly change our lives and the lives of our families and clients. Nevertheless, accidents, illnesses, and untimely deaths occur. Those events often necessitate that an attorney must abruptly stop practicing law.

Take a moment and look around. You have clients who depend upon you. You have clients with court dates tomorrow. You have clients with unfinished cases and documents. If the unthinkable happens, where will your clients turn? Who will help them navigate the path to finding new counsel, who will ask the court for a continuance on behalf of the client or assist the client in retrieving a file?

Although the need to have a succession plan is discussed in Comment [5] to Ohio Prof. Cond. Rule 1.3, there is no law or rule in effect in Ohio that requires an attorney to participate in a program like our Advance Succession Registry (the Registry). Nevertheless, all attorneys, whether a member of a law firm or a solo practitioner, have an ethical obligation to consider the immediate impact that such an unfortunate event will have upon their clients. Every attorney should consider putting a plan in place to protect those clients. Our Registry can be that plan.

The Registry allows you, as the Registering Attorney, to have control over what steps are taken immediately after events such as your unforeseen death, disability, disbarment, or other incapacity. Through the Registry, you can designate another Ohio-licensed Attorney, the Designated Attorney, to provide the immediate assistance that your clients will need if you are no longer there to help.

Being a Designated Attorney is a short-term opportunity to give back to our profession. A Designated Attorney has been given the chance to make an immediate and positive difference in the lives of clients and family members under the most unfortunate circumstances.

Ohio's attorneys are encouraged to put this stopgap plan in place today. Do not wait another minute to be the attorney who rests easy knowing that you have designated another attorney as the person that your clients can turn to in their time of need.

## **WHAT ARE SOME OF THE BENEFITS OF THE REGISTRY?**

There are many benefits to participating in the CBA's Advance Succession Registry. For example:

- The Registry will immediately assist your clients, staff, spouse/family, and estate representatives in the event of your death, disability, or unavailability.
- Your clients do not need to expressly authorize the Designated Attorney to access or transmit client files upon your death or incapacity to act. By enrolling in the Registry, you have authorized the Designated Attorney to facilitate the transmission of client files and other client property.
- The process should make it easier for you to complete additional advance planning steps including the method of transitioning of your practice upon death, disability, or other unavailability.
- The public's opinion of our profession will be enhanced and confidence in the legal profession will increase.

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## **OKAY, I AM CONVINCED THIS IS A GOOD IDEA.**

### **HOW CAN I PARTICIPATE?**

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At the CBA, we want to make sure that our Registry is user-friendly and reliable. It is our goal to make participating in the Registry a straightforward process. With that in mind and as you move toward the goal of providing for your clients and serving our profession, please read and thoroughly consider the following guidelines:

#### **1. THE REGISTRY HAS SOME LIMITATIONS**

The CBA's Registry is a source of information. The Registry does not operate to transfer a client's legal representation from one attorney to another. The Registry does not convey responsibility for a client's representation to the Designated Attorney or to any other attorney.

The Registry does not give the Designated Attorney the authority to: (1) wind down a law practice; (2) provide clients with a final accounting of fees and expenses; (3) collect fees; (4) access client trust account funds or other bank accounts; or, (5) liquidate or sell a law practice. Arrangements for payment of fees or expenses incurred by the Designated Attorney are not identified by the Registry and may be part of a separately negotiated agreement between the parties.

## **2. THE REGISTERING ATTORNEY**

As the Registering Attorney, you have already accepted the fact that, “attorneys are only human.” By registering, you have helped your clients, your family, the courts, and others.

After registering, you should also complete at least the following tasks:

- Discuss the Registry and the role of the Designated Attorney with your staff;
- Discuss the role of the Designated Attorney with your family and estate representative(s);
- Give your clients notice of your registration and identify your Designated Attorney; and,
- Within 30 days of any changes to the information on the form, including the identity of the Designated Attorney, notify the CBA.

## **3. YOU MUST REGISTER USING THE FORM CREATED BY THE CBA**

The CBA has created a form titled “The Advance Succession Registry Form” (“the Form”). It is accessible from our website for execution in conjunction with these guidelines. Submitting an accurate and fully completed Form is the only way that you can participate in the Registry.

- As the Registering Attorney, you must fully complete and sign the Form. Fully completing the Form includes providing the full name, Ohio attorney registration number, address and complete contact information for your Designated Attorney.
- When you complete and sign the Form, you, as the Registering Attorney warrant that your Designated Attorney is, at the time of registering, willing and able to perform the contemplated duties.
- You may also provide information for an alternate Designated Attorney who will be called upon to serve should the primary Designated Attorney be unavailable or unwilling to serve. Likewise, you, as the Registering Attorney warrant that the alternate Designated Attorney is, at the time of registering, willing and able to perform the contemplated duties if the Designated Attorney is unable or unwilling to serve.
- Upon completion, original, signed applications should be submitted to the CBA via U.S. mail, hand-delivery, or email to [Lori@CBAlaw.org](mailto:Lori@CBAlaw.org). If you initially submit the Form via email, you must also provide the CBA with the original Form via U.S. Mail or hand-delivery.

- Your designation will remain in effect until the Form is revoked in a writing, signed by the Registering Attorney and/or the Designated Attorney, and received by the CBA.

#### **4. THE DESIGNATED ATTORNEY**

By consenting to serve and in conjunction with Ohio Prof. Cond. Rule 1.3, Comment [5], a Designated Attorney agrees that in the event of the contingencies described herein, his/her responsibilities are generally limited to the following:

- Contacting the clients of the Registering Attorney;
- Obtaining instructions from the clients on transferring files;
- Obtaining extensions of time in litigation matters where necessary; and,
- Providing notice to relevant persons and entities regarding the status of the Registering Attorney's law practice.

#### **5. WHAT WILL HAPPEN AFTER YOU REGISTER**

- You will experience the peace of mind that comes from knowing you have taken one more step toward protecting and serving your clients.
- After we receive your fully executed Form, the CBA will provide the Registering Attorney and the Designated Attorney with letters confirming the activation of the Registry.
- To you, the Registering Attorney, the CBA will provide the following:
  - A recommendation that you add language to your fee agreements and/or letters of engagement for new clients that in the event of your incapacity or death, the client contact the Columbus Bar Association, 175 S. Third St., Suite 1100, Columbus, OH 43215, 614.221.4112, for information regarding the Designated Attorney.
  - A recommendation that you send a letter to all current clients that in the event of your incapacity or death, the client should contact the Columbus Bar Association, 175 S. Third St., Suite 1100, Columbus, OH 43215, 614.221.4112, for information regarding the Designated Attorney.
  - A recommendation that as soon as possible after submitting the completed Registry Form to the CBA, you create and continue to maintain a list identifying current and former clients with the intention of having said list assist the Designated Attorney with the transfer of files.

- Access to resources for forms and guidelines that may, if appropriate, be utilized to wind down your law practice, collect fees, and liquidate or contract to sell your law practice.
- The CBA will maintain a list and a database of the Registered Attorneys and their respective Designated Attorneys.

## **6. HOW CAN SOMEONE OBTAIN INFORMATION FROM THE REGISTRY**

To obtain information from the Registry, a Succession Information Form must be completed and returned to the CBA. The Information Form is available on the CBA's website. If the request for information comes from a court, through a court order, or from the Designated Attorney, the CBA will provide a photocopy of the entire Advance Succession Registry Form. For all other requests, only the Designated Attorney's name and contact information will be provided. All requests must be signed, dated, and accompanied by a court order or government-issued identification.

## **7. COST TO REGISTER**

All Ohio-licensed attorneys are eligible to participate in the Registry free of charge.

## **8. DISCLAIMER**

The CBA does not warrant or represent that participating in the Advance Succession Registry will comply with any Rule of Professional Conduct or Rule for the Government of the Bar (including but not limited to Gov.Bar R. VI) that may subsequently be enacted by the Supreme Court of Ohio. Neither the Registry nor these guidelines and forms establish, report, or create the standard of care for Ohio attorneys. The material is not a complete analysis of the topic and should not be construed as providing legal advice or counsel. No attorney-client relationship has been created between you and the CBA as a result of the review of these guidelines and/or the execution of the Advance Succession Registry Form. Each person should conduct appropriate legal research in this area and/or consult with counsel. The CBA is not and will not be a repository for client files or property. The CBA does not and cannot guarantee the accuracy of the information provided on the Advance Succession Registry Form by the Registering Attorney.