

# Memorandum

**To:** Interested Bar Leaders

**From:** Candace Crowley

**Date:** May 2011

**Re:** A Lawyer is Missing, Incapacitated, Disabled, Disbarred, Deceased or Suspended: What Role Does a Bar Association Play?

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In October of 2010, members of the Michigan Association of Bar Executives (MABE) gathered to hear a presentation by Michigan Attorney Grievance Commission's Rhonda Pozehl and Marissa LaRocque about what to do when attorneys are missing, incapacitated, disabled, disbarred, deceased or suspended (MIDDDDS). Motivated by a growing number of instances where lawyers are unaccountable and clients are left in peril and contacting the local bar association for help, MABE invited the Attorney Grievance Commission (AGC) to provide information on the AGC role in resolving this dilemma. What follows is a summary of some of the AGC information, and a guide for bar associations and individual attorneys about what to do and what resources are available to use in the case of a MIDDDDS attorney.

The Attorney Grievance Commission is the investigative and prosecutorial arm of the Michigan Supreme Court. One focus of its work is receiverships which may be necessary when a lawyer has not made proper arrangements to end a law practice and is MIDDDDS. Receiverships are used primarily when solo practitioners do not have

partners or a firm structure to absorb the responsibilities of client representation and proper closure of a practice. Receivership practice is governed by MCR 9.119<sup>1</sup>.

### **Emphasize Advance Planning**

The importance of planning cannot be emphasized enough. Although Michigan does not, some states have rules requiring that solo practitioners identify a surrogate attorney to handle their practice under these circumstances. The surrogate rules set forth detailed items to be addressed to ensure proper safeguard of client files and closing of a practice. Despite the lack of a Michigan surrogate rule, here are some key planning items that will assist an inventory attorney in wrapping up the practice of a MIDDDS attorney:

- Create an Inventory Form for staff or spouse to use, listing bank accounts, master list of clients, storage facilities used, safe deposit boxes and other relevant items.
- Adopt a document retention plan and regularly purge your records.
- Advise clients of what will happen in the event you are unable to complete representation.
- Select a successor in advance.
- Create a written succession plan.
- Create a will that distinguishes the duties of the successor attorney and the personal representative.

For a more detailed account of effective advance planning, see “[Planning for an Orderly Transition](#),” Dawn Evans, Michigan Bar Journal, September 2009

### **Be Proactive When an Attorney is MIDDDS**

The local bar association is most often the first to learn of the death of an attorney. It should immediately notify the State Bar about the situation, and mobilize its volunteer inventory attorney panel to action. The State Bar will notify the AGC of the death of the member.

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<sup>1</sup> (G) Inventory. If the attorney whose license is revoked or suspended, or who is transferred to inactive status pursuant to MCR 9.121 was a member of a firm, the firm may continue to represent each client with the client’s express written consent. If an attorney is transferred to inactive status or is disbarred or suspended and fails to give notice under the rule, or disappears or dies, and there is no partner, executor or other responsible person capable of conducting the attorney’s affairs, the administrator may ask the chief judge in the judicial circuit in which the attorney maintained his or her practice to appoint a person to inventory the attorney’s files and to take any action necessary to protect the interests of the attorney and the attorney’s clients. The person appointed may not disclose any information contained in any inventoried file without the client’s written consent. The person appointed is analogous to a receiver operating under the direction of the circuit court.

Lawyers have a duty to report to the AGC if they believe a lawyer's ability to serve the client or the profession is impaired, or when an attorney may be incapacitated or incompetent. The reporting attorney remains anonymous. Significant resources can be used to assist the attorney in many of these circumstances and the State Bar Lawyers and Judges Assistance Program can be of aid.

Local bars should also monitor Attorney Discipline Board notices of suspension or disbarment. It is important to make sure that client interests are protected in these situations, and the inventory or receivership actions may need to be called in to play.

### **Identify Those Willing to Act as Inventory Attorneys and File Receivership Action if Necessary**

The court rules require that at a minimum, someone take custody of the client files and notify the clients as to the whereabouts of the files and how to reach the person who has those files. The best practice is for a bar association to identify in advance those lawyers who are ready, willing and able to step in. This can involve sending letters to clients, transferring files, posting a notice on the door of the law office and/or on the local bar association website, handling cases if so willing and the client authorizes the representation, and otherwise wrapping up the practice. This can be a good opportunity for a new lawyers who want to get their name out in the community, or older lawyers who want to assist the profession in these challenging circumstances.

Whether the young or old lawyer is paid for these services, some attention should be given to malpractice coverage for the work. It is possible that the MIDDDS lawyer's malpractice tail coverage will apply, or the inventory attorney's malpractice policy will provide coverage. A Handbook for Inventory Attorney over the Law Practice of Another is available through Rhonda Pozehl at the Attorney Grievance Commission, [aspozehl@agcmi.com](mailto:aspozehl@agcmi.com) A checklist of duties of an inventory attorney is available from Ms. Pozehl as well.

In either event, the lawyer or bar association should consider whether it is necessary to obtain a court order appointing them as a receiver. As a last resort, the AGC may file for the appointment of a receiver under the rules.

### **Notify the State Bar and the Attorney Grievance Commission**

The State Bar should be notified upon the death of a lawyer. In other situations, the AGC should be notified that a local attorney is missing, incapacitated or disabled. Many clients and members of the public contact the AGC about how their case will be handled, who has custody of an original will, or how they should proceed when their MIDDDS attorney is involved. Notifying the AGC about the existence of an

inventory attorney or the filing of a receivership action will allow the AGC to promptly assist members of the public who have these questions.

**Remove MIDDDS Attorneys from LRIS Panels; Revoke Membership if Necessary**

Suspended and disbarred lawyers should be removed from Lawyer Referral Service panels. If disbarred, the lawyer should be removed from bar association membership.

**Access Resources Already Available through the State Bar of Michigan**

Advance planning materials, practice management resources, and comprehensive inventory attorney and receivership materials are available on the State Bar website. An excellent place to start is the article “[Sudden Death or Disability: Is Your Practice – and Your Family – Ready for the Worst](#)” by Catherine M. O’Connell. Please review to assist in handling instances of MIDDDS lawyers.