

PICKING UP THE PIECES

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Among the little-known functions of the Office of Lawyers Professional Responsibility — just above administering the professional corporations statute — is its trusteeship function. When a lawyer becomes disabled, dies suddenly, or absconds — and no one makes arrangements for the clients — the Minnesota Supreme Court may appoint a trustee under Rule 27, Rules on Lawyers Professional Responsibility.

Unfortunately, trusteeships have recently become a regular activity of the director's office. In the 1980s there were about ten trusteeships. Between December 1990 and February 1991 there were four more initiated. The director's office did not first serve as a trustee until 1983.

Less formal solutions to the problems of lawyer disability, disappearance, and death were apparently the rule in years gone by. Other lawyers, employees, conservators, and executors — as well as family members and others — have done informally what the trustee now does formally. Perhaps more lawyers practice not just by themselves, but in a way unconnected with others, so that the traditional networks are not available. Perhaps those who might have helped informally now worry more about authorizations and liability exposures. Whenever possible, this office tries to foster and support such informal solutions to problems, rather than seeking appointment as trustee.

What does a trustee for a law practice do — and not do? The trustee does not take on the duties of the lawyer. Nor does the trustee usually become involved in the financial affairs of the attorney, as a bankruptcy trustee would. An exception would be made for trust account funds, but there rarely are any. If there are assets belonging to the attorney, another fiduciary, whose duty is to the attorney or creditors, may need to be appointed.

The first work of the trustee is dealing with emergencies. The events giving rise to a trusteeship are often sudden and unexpected. Opposing parties, clients, and courts must learn of the lawyer's unavailability. The client must learn of the need for substitute counsel, if the file is open, and be told how to retrieve the file.

The trustee must bring some order to the law office. Opening the mail and filing have to be done. One attorney's filing practice for a year or more was to heap everything on his desk: unrecorded deeds, original wills, unopened letters from his children, letters from the Lawyers Board, pleadings and notices from courts, all mixed indiscriminately and generally unopened. Sometimes, evidence of criminal activity, such as theft or unlawful flight (or in one case, of murder) may be mixed in with confidential legal documents. Temporary clerical help may have to be hired. The sorting and organizing and responding to emergencies must be done as promptly as possible.

The law office may need to be secured, or arrangements made for other space. The landlord may already be contemplating eviction and perhaps destruction or storage of files. An assistant director, new to the office, was once assigned the off-the-job-description task of removing 850 pounds of lawyer files from a warehouse. A broken shock absorber made him ask whether this was really better than his first assignment in private practice — attempting replevin of a Chihuahua.

The trustee's main work involves dealing with client files. The law office files are usually removed to the director's office. The files are then inventoried. Clients are notified of the lawyer's situation and arrangements to obtain their files. Open file notices are sent first, then closed files.

Clients, adversaries, and creditors often call the trustee. Clients who have paid retainers for work that remains incomplete, or never begun, are understandably distraught or irate. If the lawyer accepted the retainer without any intent to do the work, a client security fund claim may be made.

The magnitude of trustee work varies greatly. Sometimes there are thousands of files and documents to be managed. Old files in a basement or garage must sometimes be examined at least cursorily to see whether they should be collected and returned. Usually no individual file reviews are undertaken to determine whether there are especially important documents. If wills, deeds, and the like are identified, special measures will be taken.

Last year three attorneys in private practice volunteered their time and services to pick up the pieces when a lawyer in solo practice suffered a severe and prolonged nervous breakdown. Donna Roback, Doug Hedin, and Bill Foster spent hundreds of hours reviewing files, meeting with clients, putting out fires, and generally trying to mitigate the damage to clients by the collapse of a busy law practice. Because two of them practiced in the same field as the disabled lawyer, they were especially helpful to the abandoned clients. Some of the clients, particularly those who had paid retainers for incomplete services, were too angry to be appreciative of the trustees' work. One client was suspicious of getting free legal help and checked to see whether the trustee got money "under the table!" Several years ago lawyers Virgil Herrick and David Newman volunteered their help as trustees to deal with the files Mark Sampson left behind. The Lawyers Board provides clerical support, forms, and advice to volunteer trustees, and Supreme Court appointments include liability protection. Volunteers deserve recognition.

With or without volunteers, trusteeships are expensive. Even with computerized systems, handling hundreds or thousands of files and documents requires large amounts of clerical time. Recently, our counterparts in another state called to learn how lawyer trusteeships are handled in Minnesota. That state had spent over \$20,000 in fees paid to lawyers in private practice to handle a single trusteeship. Several states have recently implemented lawyer trustee programs patterned on those developed in Minnesota.

The Minnesota Supreme Court authorizes and approves law office trustee actions. The trustee reports to the Court, which ultimately issues a discharge order when the trustee's work is done. The order usually includes a period for retention of files and a date for file destruction.

The director's office cannot become trustee, or find volunteer trustees, in any significant percentage of situations involving the death, disappearance, or disabilities of solo practitioners. Less formal procedures have to be used. Surely practicing lawyers — whether they are office sharers, friends, neighbors, or just volunteers — have a great role to play in seeing that somebody picks up the pieces when a law office suddenly falls apart.