

Have You Designated an Inventory Attorney for Your Firm?

“Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this rule; provided, however, that no designation is required with respect to any portion of the member’s practice as an employee of a governmental entity.” [FLORIDA BAR RULE 1-3.8 RIGHT TO INVENTORY](#)

What happens to an attorney’s clients if he or she is left unable to practice? In the unique and present case of the COVID-19 pandemic, this is an important question to ask. This article explains these terms as well as the requirements Florida attorneys must fulfill – and all attorneys, nationwide, should consider – as a part of a lawyer’s professional responsibility.

What is a Succession Plan?

The professional responsibility of an attorney – the solo practitioner and partner in a large firm, alike – is to hold their clients’ legal matters as the highest priority. It is, therefore, a professional obligation to put a succession plan, or plan of continuation, in place so that clients’ matters are appropriately handled, cared for, and pursued.

A succession plan for law firms involves developing a formal process to transition the legal practice to another attorney or a law firm in order to protect both the law firm and the clients in the event of an attorney’s unexpected death or incapacity resulting in their inability to practice law, such as a suspension or disbarment.

An effective succession plan, one created and completed in conformity with all applicable rules and regulations of the Florida Bar Association, should make the transition in a tumultuous time as seamless as possible. Succession plan details typically include who is designated and has the authority to address the needs of clients, and how to access client information, banking details, and important passwords.

Who Carries out a Succession Plan for a Law Firm?

Various titles across different states are used to refer to the legal fiduciary who can carry out the succession plan, such as ‘attorney surrogate,’ ‘trustee,’ ‘successor attorney,’ and so on. In Florida, the legal fiduciary to take over the clients’ legal matters is called an Inventory Attorney. The state of Florida, [along with at least three other states](#), mandates the appointment of such a successor fiduciary, regardless of whether the lawyer resides in the state. Lawyers are required to designate an Inventory Attorney regardless of their firm size, even if they are serving as in-house general counsel. The [Florida Bar Association Rule 1-3.8\(e\)](#) made effective on January 1, 2006, requires that a lawyer designate another lawyer in good standing with the Florida Bar Association to serve as an inventory attorney in the event of an attorney’s inability to practice to carry out the succession plan for the attorney or firm.

What does an Inventory Attorney do?

An Inventory Attorney is required to inventory/audit the client files to ensure vital dates are not missed that could harm the client or their legal matter, such as a trial date or filing deadline, or even annual business and compliance filings.

They must also notify all clients promptly that their lawyer can no longer represent them. The Inventory Attorney may then give the clients their applicable files, assist them in finding new legal counsel, or even agree to represent the clients if agreed to by the parties. However, the Inventory Attorney is not required to represent any of the clients.

It's important to note that an Inventory Attorney is not part of the attorney-client relationship. Many lawyers decline to serve as an Inventory Attorney, mistakenly thinking that they will automatically create an attorney-client relationship with the former lawyer's clients if they do.

How do you designate an Inventory Attorney?

If you know a lawyer who is an active member of the Florida Bar and eligible to practice law in Florida, you can ask them if they would be willing to serve as your Inventory Attorney. Suppose you do not personally know an appropriate and willing attorney. In that case, you can locate an approved inventory attorney by going to floridabar.org, selecting the "Member Portal," and then the "[Inventory Attorney](#)" link to fill out the online form.

Once you and an eligible attorney agree that they will become your Inventory Attorney, you should fill out and provide the [Designation of Inventory Attorney](#) form to the Florida Bar, or, at a minimum, create two originals to be kept but you and the Inventory Attorney. point, you should select a replacement inventory Attorney as soon as possible.

Take Away:

Succession planning is vital, even for small and solo law firms, so make sure you have a succession plan in place, as well as a designated Inventory Attorney!

Resources:

- The Florida Bar Inventory Attorney Forms: [form](#), [manual](#), and [checklist](#);
- Review the [drilled down steps](#) for Florida probate/Inventory Attorney procedure in the event of absence;
- [Review the RULE 1-3.8](#) from the Florida Bar;
- Learn more about [creating a succession plan](#) from the Bar;
- Listen to [this Podcast](#) by the Legal Talk Network;
- Read "[Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events](#)," by Lloyd D. Cohen and Debra Cohen.

This Blog was written by Liberty Law Suites, Director of Operations, Katelyn J. Dougherty, JD.

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