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9
10 **IN THE SUPREME COURT**
11 **STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-

13 **PETITION TO AMEND RULES**
14 **32, 41, 42 AND 66 THROUGH 69,**
15 **ARIZ. R. SUP. CT.**

PETITION

16 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State Bar”)
17 petitions the Court to amend Rules 32, 41, 42 and 66 through 69, Ariz. R. Sup. Ct.
18 The amendments proposed in this petition arose out of the State Bar’s Succession
19 Planning Task Force, which the State Bar formed to make recommendations for
20 dealing with a law practice if the lawyer dies, retires or becomes incapacitated or
21 otherwise abandons the practice and either has failed to appropriately close or plan
22 for closing it.

Introduction

23 Any lawyer – whether in a solo practice or multi-lawyer firm, public or
24 private setting – must plan for the expected or unexpected day when the lawyer
25 cannot (either by choice or involuntarily) discharge his or her obligations to clients.

1 The lawyer's lack of planning will result in burdens on the lawyer's family and
2 friends, co-workers or the State Bar. Not all lawyers understand their continuing
3 obligations to clients or the ramifications of failing to plan on clients and the State
4 Bar.

5 After studying the issue and taking into account local and national
6 procedures, legal and ethical obligations, and available resources, the Task Force
7 proposed a multifaceted approach that included action under the State Bar's control
8 (e.g., producing a handbook, educating members in other ways, revising the file-
9 retention policy discussed *infra*) as well as asking the Court to amend several rules
10 governing the practice of law.¹

11 The State Bar now proposes those rule amendments and asks the Court to:

- 12 • Add a new professional obligation, as Rule 41(i), Ariz.
13 R. Sup. Ct., that clearly obligates all members to plan
14 for their termination of or inability to continue a law
15 practice;
- 16 • Add new comments to ERs 1.15 and 1.16, Rule 42,
17 Ariz. R. Sup. Ct., explaining lawyer obligations to
18 safeguard client documents and return client-provided
19 documents to clients;
- 20 • Add a requirement as new Rule 32(c)(13), Ariz. R.
21 Sup. Ct., that lawyers in private practice disclose, on
22

23
24 ¹ The Task Force's April 2014 report and recommendations and August 2014
25 supplemental report and recommendations, as well as a summary of the
recommendations as approved by the State Bar Board of Governors, are available
at <http://www.azbar.org/sectionsandcommittees/taskforces/successionplanning>.

1 their annual dues statement, whether they have a
2 successor counsel and the name of that person; and

- 3 • Streamline and clarify Rules 66 through 69, Ariz. R.
4 Sup. Ct., under which a conservatorship may be
5 imposed on the practice of a lawyer or former lawyer.

6 Each of these recommendations is discussed below.

7 **Discussion**

8 **I. Proposed new Rule 41(i), Ariz. R. Sup. Ct.**

9 The lack of succession planning by lawyers has directly impacted the State
10 Bar because many lawyers who have died, disappeared, become disabled or been
11 disbarred or suspended have left either an ongoing practice that needs to be closed
12 down or have abandoned client files. A lawyer who dies suddenly may leave
13 hundreds of active files and clients who need to be notified. A lawyer who has been
14 disbarred may abandon boxes of files with a landlord or storage facility who is not
15 being paid to keep those files safe.

16 If no family member, friend or other lawyer is available to do the work, the
17 State Bar is effectively left with no choice but to take control over the deceased or
18 incompetent lawyer's practice or retrieve the boxes abandoned by the disbarred
19 lawyer to ensure that the client files are safeguarded, possibly returned to the
20 clients, and then destroyed properly at the appropriate time. Because the State Bar's
21 mission explicitly includes serving the public, the State Bar cannot take the risk
22 that the files may end up simply dumped into a Dumpster, with client information
23 at risk and available for all to see.

24 The State Bar's ethics hotline, its conservatorship program and the Lawyers
25 Assistance Program regularly receive calls from lawyers asking for help or
information about closing down law practices. In addition, family members,

1 landlords, storage facilities and other lawyers often call the State Bar about lawyers
2 who have died, disappeared, become disabled or been disbarred and left either an
3 ongoing practice that needs to be closed down or often has left or abandoned client
4 files or funds. Clients and former clients also often call the State Bar looking for
5 their lawyers or their files.

6 Finally, as a general matter, many lawyers do not understand that their
7 ethical obligations include appropriately disposing of client files, even if doing so
8 costs them time and money. The State Bar regularly receives calls from private
9 lawyers who are retiring and erroneously believe the State Bar will take and store
10 original wills or other client files. Boxes of wills have been literally dumped on the
11 State Bar's doorstep.

12 Nothing requires *all* lawyers – no matter their practice setting -- to adopt a
13 succession plan. ABA Formal Op. 92-369 *suggests* that a sole practitioner have a
14 backup lawyer named to notify the lawyer's client in the event the lawyer is unable
15 to practice. Ariz. Ethics Op. 04-05 *advises* that a prudent lawyer would make
16 arrangements to administer the lawyer's trust account if the lawyer dies or becomes
17 disabled.

18 It appears to be time to add a professional obligation that clearly obligates
19 all members to plan for their termination of or inability to continue a law practice.
20 To that end, the State Bar suggests adding a new section to the rule that lists the
21 general duties and obligations of members -- Rule 41, Ariz. R. Sup. Ct. -- to require
22 that lawyers plan for their temporary or permanent closing or inability to continue
23 their law practice. A new comment would explain that planning requires, at a
24 minimum, that lawyers in private practice identify successor counsel who could
25 step in and handle the lawyer's practice if necessary, and that lawyers not in private
practice need to have a plan reasonable for their practice setting. The proposed
language is attached as Appendix A.

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II. Proposed new comments to ERs 1.15 and 1.16, Rule 42, Ariz. R. Sup. Ct.

No practice rules require a lawyer to cull his or her client files. Theoretically, a lawyer could keep copies of every document in every file for every representation. But when that lawyer wants to stop practicing or is no longer able to practice, he or she might have hundreds of boxes of files in storage – maybe in a rented facility, his or her garage, or another law firm’s office. Some of those legal files no doubt will include lawyer-prepared original documents, such as wills, or client-provided documents.

A new comment should be added to ER 1.15 (safekeeping property) and ER 1.16 (declining or terminating representation) encouraging lawyers to provide or return original documents or client-provided documents to their clients. If they choose to keep original or client-provided documents, they must adopt safeguards. While prohibiting lawyers from keeping original client documents, such as wills, might be the easiest solution, some lawyers, such as many estate and probate practitioners, necessarily keep original documents at their clients’ request.

The proposed new comment also warns that if lawyers do not designate successor counsel – as would be required by proposed Rule 41(i) – and the State Bar must perfect a conservatorship over the lawyer’s practice, then the lawyer or the lawyer’s estate may be assessed the conservatorship costs. The language of the proposed comment is attached as Appendix B.

III. Proposed new Rule 32(c)(13), Ariz. R. Sup. Ct.

The State Bar proposes that lawyers in private practice be required to disclose, on their annual dues statement, whether they have a successor counsel and

1 the name of that person. This requirement is modeled after Rule 32(c)(12), which
2 requires that lawyers in private practice disclose whether they have professional-
3 liability insurance.

4 The State Bar often receives calls from clients and former clients who are
5 looking for lawyers who have died, disappeared, become disabled or been disbarred
6 and have left or abandoned client files or funds. If lawyers were required to identify
7 successor counsel who could step in and triage cases if necessary, and disclose the
8 name to the State Bar, the State Bar would have a starting point for helping clients
9 and former clients track down the lawyer, file or funds. At the very least, requiring
10 such disclosure would prompt many, if not most, lawyers to develop a succession
11 plan.

12 The language of the proposed rule is attached as Appendix C.

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14 **IV. Proposed revisions to clarify and streamline Rules 66**
15 **through 69, Ariz. R. Sup. Ct.**

16 If no family member, friend or other lawyer is available, the State Bar is
17 effectively left with no choice but to take control over the deceased or incompetent
18 lawyer's practice or retrieve the boxes abandoned by a disbarred lawyer to ensure
19 that the client files are safeguarded, possibly returned to the clients, and then
20 destroyed properly at the appropriate time. Because the State Bar's mission
21 explicitly includes serving the public, the State Bar cannot take the risk that the
22 files may end up simply dumped into a Dumpster, with client information at risk
23 and available for all to see.

24 As a result, to preserve, return, protect and, possibly, eventually destroy
25 unclaimed client files, the State Bar (and anyone else) may petition under Rules 66

1 through 69, Ariz. R. Sup. Ct., for a conservator to be named over a lawyer's practice
2 when no one else is available to so.

3 When the State Bar petitions for appointment of a conservator (routinely a
4 State Bar employee) and the petition is granted, the State Bar takes possession of
5 the client files, and then processes, stores and/or destroys them based on the
6 Supreme Court rules and a file-retention policy the Board of Governors approved
7 in December 2007.

8 Once the conservator is appointed, Rule 67(c) provides that when six months
9 have passed without any activity, the conservator may apply to the court for an
10 order discharging the conservator and then the files “will be maintained by the state
11 bar in accordance with the state bar’s file retention policy as approved by the Board
12 of Governors.” The State Bar’s current file-retention policy goes beyond
13 “maintain[ing]” the files by relying on ethics opinions that direct how *lawyers*
14 retain client files, when, in fact, under Rule 69(a) the conservator explicitly does
15 not have a lawyer-client relationship with the respondent lawyer’s clients. The file-
16 retention policy attempts to address issues the rules themselves should address and
17 applies an overly conservative approach to file retention.

18 As a result of the combination of the rules and the file-retention policy, the
19 State Bar stores several different categories of files: files that are awaiting to be or
20 are in process of being inventoried; older files that are not being inventoried but
21 must be stored until they can be destroyed; and documents and files that the State
22 Bar has determined should not be destroyed and has culled from closed
23 conservatorship matters. As of the middle of 2014, the stored files currently total
24 about 1,500 boxes, most in a rented facility of about 2,300 square feet. While the
25 lion’s share of those boxes fall into the first two categories, 39 boxes contain files
and documents determined under the current file-retention policy to be “non-
destructible.”

1 In 2013 and 2014, the State Bar had an all-time high number of
2 conservatorships. In 2013, it spent almost \$226,000 on the conservatorship
3 program, not counting the cost of rented storage space.

4 Problems with the current rules and proposed solutions include:

- 5
- 6 a. Rule 67(a) requires the “conservator [to] take immediate possession
7 of all files and papers of the respondent.” In this day and age, client
8 files most certainly include computer data and related storage, as well
9 as physical items held by lawyers for their clients. Most significantly,
10 however, taking “immediate possession” may mean that the State Bar
11 must transport and store hundreds of boxes of files. In some
12 circumstances, the State Bar may arrange to leave files in a storage
13 facility or other location. The State Bar proposes that the rule allow
14 the conservator to take possession “or control” of “files, papers, and
15 records...including computer data and related storage.”
- 16 b. Sections (b) and (c) of Rule 67 are confusing when read together. Rule
17 67(b) directs the conservator to inventory all items recovered, and
18 does not distinguish between current and former clients or active and
19 inactive cases. Rule 67(c) requires the conservator to send written
20 notice to “all *clients* of the respondent of the fact of the appointment
21 of a conservator, the grounds that required such appointment, and the
22 possible need of the *clients to obtain substitute counsel.*” [Emphasis
23 added.] Rule 67(c) implies that only current clients who need
24 substitute counsel – because they have active cases – need to be
25 notified. The State Bar proposes revising Rule 67(b) to direct the
conservator to make a “reasonable assessment” of files, papers and

1 record, and inventory those files in which the respondent lawyer
2 appeared to be actively representing a client; all files in which the
3 representation appeared to terminate less than five years earlier; and
4 older files that may reasonably require further evaluation. Files falling
5 into this last category are those involving trust and estate documents,
6 including original wills, and capital cases. All other files need not be
7 inventoried.

8 c. Rule 67(c) directs that files may be returned to clients or substitute
9 counsel if they execute written receipts, and that those receipts be filed
10 with the court upon termination of the conservatorship. This
11 requirement is burdensome and vague and could expose client
12 information. To protect client privacy and because of the potential
13 volume of receipts, the State Bar has not attached the actual receipts
14 to court filings but attaches an exhibit to its final report in which it
15 lists clients – identified only by initials, city and town -- and whether
16 they have retrieved their files. The State Bar proposes revising Rule
17 67 to direct that a motion to discharge include a report of the
18 disposition and attempted disposition of all inventoried files.

19 d. Rule 67(c) provides that when six months have passed without any
20 activity, the conservator may apply to the court for an order
21 discharging the conservator and then the files “will be maintained by
22 the state bar in accordance with the state bar’s file retention policy as
23 approved by the Board of Governors.” As discussed above, the State
24 Bar’s conservatorship file-retention policy is broad and cumbersome
25 and has resulted in labor- and cost-intensive conservatorship

1 processes. The State Bar proposes that the rule be revised to abandon
2 the file-retention policy and delete the reference in Rule 67(c) so that
3 Rules 66 through 69 would provide the explicit obligations and
4 authority without referring to an external policy adopted by the Board
5 of Governors; clients of files that have been inventoried would be sent
6 one letter to their last-known address, as ascertained by reviewing the
7 file, advising them to make arrangements to retrieve their files; files
8 could be destroyed when the conservator is discharged and the court
9 issues an order.

10 e. The rules do not provide for the court to issue orders in light of
11 extraordinary circumstances or to issue orders allowing the
12 conservator to destroy other files or documents, such as returned mail,
13 related to the conservatorship. The State Bar proposes to give the
14 appointing court authority to make any other orders as justice requires;
15 after taking possession of files, the conservator could ask the
16 appointing court for permission to destroy any files.

17
18 f. Rule 68(d) provides that a non-State Bar conservator may apply to
19 the Board of Governors for compensation. The State Bar proposes that
20 the conservator (either State Bar or non-State Bar) be awarded all
21 costs and expenses incurred in the conservatorship from the
22 respondent or the respondent's estate; eliminate the provision
23 allowing non-State Bar conservators to apply to the State Bar for
24 compensation.
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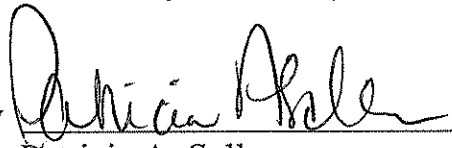
Rules 66 through 69 with proposed amendments are attached as Appendix

D.

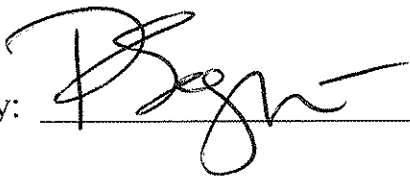
Conclusion

The State Bar believes that the changes described above will help lawyers prepare for the unthinkable and help the State Bar deal with the ramifications of lawyers who have not done so.

RESPECTFULLY SUBMITTED this 12th day of January, 2015.

By 
Patricia A. Sallen
Deputy General Counsel
John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 12th day of January, 2015.

By: 

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APPENDIX A

1 State Bar's Proposed Amendment to Rule 41, Ariz. R. Sup. Ct.

2 *(Petitioner's proposed additions are shown by underscoring*
3 *and proposed deletions are shown by ~~strikethrough~~)*

4 Rule 41. Duties and Obligations of Members

5 The duties and obligations of members shall be:

6 * * *

7
8 (i) To protect current and former client interests by planning
9 for the lawyer's termination of or inability to continue a law
10 practice, either temporarily or permanently.

11 **Comment [2007 Amendment]**

12 [1] Lawyers, whether or not engaged in the practice of law,
13 should act honorably and treat others with courtesy and
14 respect. Unprofessional conduct, as defined by Rule
15 31(a)(2)(E), during the practice of law may result in
16 discipline pursuant to Rules 41(g) and 53(j). Specific conduct
17 outside the practice of law, such as conviction of a felony,
18 Rule 53(h), or engaging in conduct involving dishonesty,
19 fraud, deceit, or misrepresentation, Rule 42, ER 8.4(c), and
20 Rule 53(a), may also be grounds for discipline.

21 [2] Lawyers must plan for the possibility that they will be
22 unable or unwilling to discharge their duties to current clients
23 or to appropriately dispose of client-related materials or other
24 property of former clients. For lawyers in private practice –
25 whether in solo or multi-lawyer firms – this obligation at a
minimum includes identifying another active member of the
State Bar of Arizona who agrees to assume such
responsibilities. Lawyers who are not in private practice,
such as those employed by government or corporate entities,
should have a plan reasonable for their practice setting.

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APPENDIX B

1 State Bar's Proposed Amendment
2 to ERs 1.15 and 1.16, Rule 42, Ariz. R. Sup. Ct.

3 *(Petitioner's proposed additions are shown by underscoring
4 and proposed deletions are shown by ~~strikethrough~~)*

5 **New comment [8] to ER 1.15 and new comment [10] to
6 ER 1.16 (same text):**

7 Lawyers have an ethical duty to assure that all documents provided to
8 them by their clients are returned or tendered to the clients. If a client
9 does not receive all client-provided documents, the lawyer has a duty to
10 safeguard that property for the length of time required for the practice
11 area. Lawyers are encouraged to return original documents to their
12 clients, unless safeguards are in place to keep the clients' files.
13 Consistent with Rule 41(i), Ariz. R. Sup. Ct., all lawyers in private
14 practice must identify successor counsel to assume responsibility for the
15 lawyer's files when the lawyer ceases to practice law, either temporarily
16 or permanently. Failing to designate successor counsel may result in the
17 State Bar perfecting a conservatorship pursuant to Rules 66-69, Ariz. R.
18 Sup. Ct., including assessing the lawyer or the lawyer's estate with costs.
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APPENDIX C

1 State Bar's Proposed Amendment to Rule 32, Ariz. R. Sup. Ct.

2 (Petitioner's proposed additions are shown by underscoring
3 and proposed deletions are shown by ~~strikethrough~~)

4 Rule 32. Organization of State Bar of Arizona

5 * * *

6 (c) Membership

7 * * *

8 13. Successor Counsel Disclosure.

9
10 A. Each active member of the State Bar of Arizona shall
11 certify to the State Bar on the annual dues statement or in
12 such other form as may be prescribed by the State Bar on or
13 before February 1 of each year: (1) whether the lawyer is
14 engaged in the private practice of law; (2) if engaged in the
15 private practice of law, whether the lawyer has made
16 arrangements with another active member of the State Bar
17 ("Successor Counsel") to close down the lawyer's practice if
18 the lawyer dies, or to handle it in the event the lawyer is
19 incapacitated; and (3) the name of the Successor Counsel. If
20 the identity of the Successor Counsel changes, the lawyer
21 shall notify the State Bar of Arizona in writing within 30
22 days.

23
24 B. Any active member of the State Bar of Arizona who fails
25 to comply with this rule in a timely fashion may, on motion
of the State Bar pursuant to Rule 62, be summarily suspended
from the practice of law until such time as the lawyer
complies. Supplying false information in complying with the
requirements of this rule shall subject the lawyer to
appropriate disciplinary action.

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APPENDIX D

1 State Bar's Proposed Amendments to Rules 66-69, Ariz. R. Sup. Ct.

2 (Petitioner's proposed additions are shown by underscoring
3 and proposed deletions are shown by ~~strikethrough~~)
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5 **Rule 66. Appointment of Conservator to Protect Client Interests**

6 (a) **Appointment of Conservator.** The state bar or any other interested
7 person may petition the presiding judge of a superior court or the
8 presiding judge's designee ("appointing judge") to appoint one or more
9 eligible persons to act as conservators of the client files and records,
10 client trust accounts and such other affairs of a lawyer or formerly
11 admitted lawyer, as the appointing judge determines appropriate. There
12 shall be no filing fee for petitions for conservator under this rule. The
13 appointing presiding Court judge shall appoint a conservator if the lawyer
maintains or has maintained a law practice within the county, no partner
or other responsible successor to the practice of the lawyer is known to
exist, and:

- 14 1. the lawyer is made the subject of an order of interim suspension and
15 related matters; or
16 2. the appointing presiding judge of the superior court by order directs
17 ~~bar counsel~~ the state bar to file an application under this rule; or
18 3. the lawyer is transferred to inactive status because of incapacity or
disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

19 (b) **Service of Petition.** A copy of the petition and any related order to show
20 cause shall be personally served upon the respondent lawyer, ~~the chief~~
21 ~~bar counsel~~ for the sState bBar of Arizona, and upon other persons as
22 provided in Rule 63 governing transfer to disability inactive status. Upon
23 affidavit of petitioner or the state bar ~~bar counsel~~ that diligent efforts have
24 failed to reveal the whereabouts of respondent, or that respondent is
evading service, service shall be made ~~upon the clerk of this court, who~~
25 ~~shall proceed as provided for in discipline proceedings, except that~~
service shall be final when made. on the respondent by certified
mail/delivery restricted to addressee in addition to regular first-class mail,
sent to the last address provided by the respondent to the state bar

1 pursuant to Rule 32(c)(3). When service of the petition is made by mail,
2 the state bar shall file a notice of service in the conservatorship matter
3 indicating the time and manner of mailing. Service shall be deemed
4 complete when the notice is filed.

4 **(c) Hearing on Petition; Order; Authority.**

- 5 1. Within seven days of the petition being filed, The the appointing
6 presiding judge of the superior court shall may conduct a hearing on the
7 petition or may rule on the petition without a hearing within seven (7)
8 days of filing.
- 9 2. If the appointing judge conducts a At the hearing, the petitioner shall
10 have the burden of proving by a preponderance of the evidence that
11 grounds exist for the appointment of a conservator.
- 12 3. The presiding appointing judge shall promptly enter an order either
13 granting or denying all or part of the petition. The order shall contain
14 findings of fact and a statement of the grounds upon which the order is
15 based. If no appearance has been entered on behalf of the respondent,
16 a copy of the order shall be served upon respondent in the manner
17 prescribed by section (b) of this rule.
- 18 4. The parties may request and the appointing judge may make any
19 other rulings as justice requires.

20 **(d) Effect of Petition.** The filing of a petition for the appointment of a
21 conservator under these rules shall be deemed, for purposes of any statute
22 of limitations or limitation on time for appeal or vacation of a judgment,
23 as the timely filing in the superior court or other proper court of this state,
24 on behalf of every client of the respondent, of a complaint or other proper
25 process commencing any action, proceeding, appeal or other matter
arguably suggested by any information appearing in the files of the
respondent if:

1. the application for appointment of a conservator is granted; and
2. substitute counsel actually files an appropriate document in a court
within thirty (30) days after executing a receipt for the file relating to
the matter.

24 **(e) The clerk of the superior court shall make certified copies of the order**
25 **of appointment available upon request of the conservator without**
charge.

1 **Rule 67. Duties of Conservator**

2
3 (a) **Possession of Files.** The conservator shall take immediate possession or
4 control of all files, ~~and~~ papers and records of the respondent, including
5 computer data and related storage, if the conservator deems it necessary.
6 If such possession cannot be obtained peaceably, the conservator shall
7 apply to the appointing ~~court~~ judge for issuance of a warrant authorizing
8 seizure of the files. Probable cause for issuance of such a warrant shall be
9 an affidavit executed by the conservator reciting the existence of the
10 conservatorship and the fact that the persons in control of the premises
11 where the files are or may be located will not consent to a search for, or
12 removal of the files, or other facts showing that the files cannot be
13 obtained without the use of the process of the court.

14 (b) **Inventory.** The conservator shall make a ~~written inventory~~ reasonable
15 assessment of all files, papers and records, including computer data and
16 related storage, taken into the conservator's possession or control. The
17 conservator shall then make a written inventory of all files in which the
18 respondent appeared to be actively representing a client, of all files in
19 which the representation appeared to terminate less than five years prior
20 to the conservatorship being granted, and older files that may reasonably
21 require further evaluation. For purposes of this rule, files that may require
22 further evaluation include original wills, other trust and estate documents,
23 and documents from capital criminal cases.

24 (c) **Written Notice to Clients of Conservatorship.** The conservator shall
25 send written notice to all clients listed in the inventory ~~of the respondent~~
of the fact of the appointment of a conservator, the grounds that required
such appointment, and the possible need of the clients to obtain substitute
counsel. Written notice shall be by first class mail to the client's last known
address, as ascertained from a review of the client's file.

(d) **Return of Files.** A file in the conservator's possession or control shall
may be returned to a client upon the execution of a written receipt, or
released to substitute counsel upon the request of the client and execution
of a written receipt by such counsel.

(e) ~~(e)~~ **Termination of Conservatorship.** Six months after sending written

1 notice to clients as described in section (c), the conservator may move the
2 appointing judge for an order discharging the conservator. Upon the
3 termination of the conservatorship, the conservator shall file all such
4 receipts with the court. The motion shall include a report of the
5 disposition and attempted disposition of all inventoried files. Upon
6 discharge of the conservator, the appointing court may order the
7 conservator to destroy all files and records not returned pursuant to
8 section (d) or not previously destroyed. When six (6) consecutive months
9 have passed without any activity, the conservator may apply to the court
10 for an order discharging the conservator. Thereafter, the files and papers
11 of the respondent will be maintained by the state bar in accordance with
12 the state bar's file retention policy as approved by the Board of
13 Governors.

14 **(f) (d) Conservator-Client Relationship.** Neither the conservator nor any
15 partner, associate or other lawyer practicing in association with the
16 conservator shall:

- 17 1. make any recommendation of counsel to any client identified as a
18 result of the conservatorship in connection with any matter identified
19 during the conservatorship; or
- 20 2. represent such a client in connection with:
 - 21 A. any matter identified during the conservatorship; or
 - 22 B. any other matter during or for a period of three (3) years after the
23 conclusion of the conservatorship.

24 **(g) Filing a Written Report.** The conservator shall file a written report with
25 the appointing judge not later than thirty (30) days after the date of
appointment, advising the court of the status of efforts to comply with the
requirements as set forth in paragraphs (a) through (d) of this rule.
Thereafter, the conservator shall file a similar written report every sixty
(60) days until discharged.

(h) (e) Request to Destroy Files. After taking possession or control of files,
papers and records of the respondent, the conservator may move the
appointing judge for an order granting permission for the conservator to
destroy files.

26 **Rule 68. Conservator; Bank and Other Accounts**

1 (a) **Notification of Financial Institutions.** A conservator shall notify all
2 banks and financial institutions in which the respondent maintained either
3 professional or trustee accounts of the appointment of a conservator under
4 these rules. Service on a bank or financial institution of a certified copy
5 of the order of appointment of the conservator shall operate as a
6 modification of any agreement of deposit among such bank or financial
7 institution, the respondent and any other party to the account so as to
8 make the conservator a necessary signatory on any professional or trustee
9 account maintained by the respondent with such bank or financial
10 institution. ~~The clerk of the superior court shall make certified copies of
11 the order of appointment available upon request of the conservator
12 without charge.~~ The appointing court on application may order that the
13 conservator shall be sole signatory on any such account to the extent
14 necessary for the purposes of these rules and may direct the disposition
15 and distribution of client and other funds following a determination that
16 the clients or third parties are entitled to the funds.

17 (b) **Client Funds.** The conservator shall return all client funds in the custody
18 of the respondent to the clients as soon as possible, allowing for deduction
19 of expenses or other proper charges owed by the clients to the respondent.

20 (c) **Sufficient Funds.** Whenever it appears that sufficient funds are in the
21 possession of the conservatorship to permit the return of all client funds
22 in the custody of the respondent, and otherwise to complete the
23 conservatorship and pay its expenses authorized under these rules, the
24 conservator shall permit the respondent or the respondent's estate to take
25 full possession of any remaining funds in the respondent's personal or
operating accounts. After reimbursement to the conservator of costs and
expenses, aAny remaining funds or monies being held in respondent's
trust account shall be directed and distributed by order of the appointing
judge court to the Client Protection Fund.

(d) **Assessment of Costs. Certification of Payment of Expenses and
Compensation of Conservator.**

1. The appointing judge shall award the conservator the costs and
expenses of the conservatorship proceeding, including all costs resulting
from the duties imposed by Rule 68.

2. The necessary expenses and any compensation of a conservator shall, if
possible, be paid by the respondent or the respondent's estate.

1 ~~3. If not so paid, the conservator may apply to the board for payment. The~~
2 ~~board shall direct that all of the necessary expenses and all or a portion~~
3 ~~of the requested compensation be paid as a cost of disciplinary~~
4 ~~administration and enforcement or from any other source it deems~~
5 ~~appropriate. The necessary expense and reasonable compensation for the~~
6 ~~conservator as determined by the board shall be assessed against the~~
7 ~~respondent as set forth in Rule 65 whether paid by the state bar or not.~~
8 ~~Necessary expenses and reasonable compensation of a conservator to be~~
9 ~~paid by the state bar shall be determined by the board and shall not exceed~~
10 ~~\$10,000 unless extraordinary circumstances exist. Upon application for~~
11 ~~reinstatement or readmission by the respondent, the costs and expenses~~
12 ~~and compensation paid by the state bar shall be reimbursed and such~~
13 ~~amounts not previously paid to the conservator shall then be paid. If the~~
14 ~~conservator is the State Bar, the respondent must pay costs and expenses~~
15 ~~prior to applying for reinstatement or readmission.~~

16 ~~(e) **Assessment of Costs.** Costs and expenses of conservatorship~~
17 ~~proceedings shall be determined, assessed, and enforced as provided for~~
18 ~~in disciplinary proceedings.~~

19 **Rule 69. Liability of Conservator**

20 The general law of conservators and fiduciaries shall apply to the conduct of the
21 conservator and the conservatorship, except that a conservator appointed under
22 these rules shall:

- 23 (a) not be regarded as having an attorney-client relationship with clients of
24 the respondent, except that the conservator shall be bound by the
25 obligation of confidentiality toward clients imposed by the Arizona Rules
of Professional Conduct with respect to information acquired as
conservator;
- (b) have no liability to the clients of the respondent or any other person
except for injury ~~to such clients~~ caused by intentional, willful, or grossly
negligent breach of duties pursuant to Rules 66-69, Ariz. R. Sup. Ct. as a
conservator; and
- (c) be immune to separate suit brought by or on behalf of the respondent or
respondent's estate or other person. Any objections by or on behalf of the
respondent or any other person to the conduct of the conservator shall be
raised in the appointing court during the pendency of the conservatorship.