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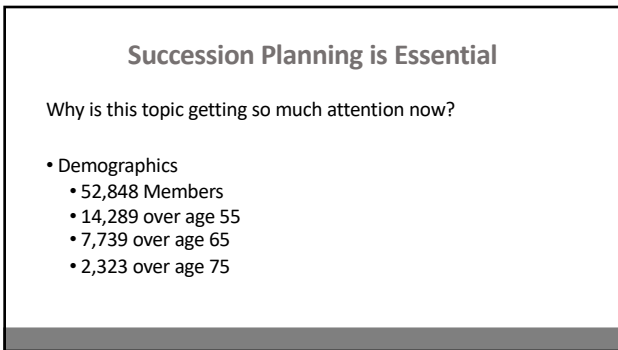
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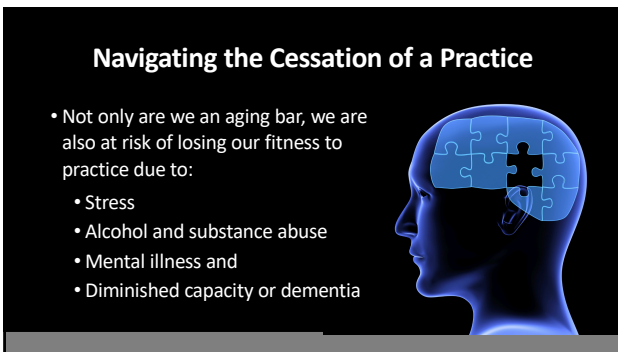
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### Making a Graceful Exit

- Make (and stick to) a Retirement Plan!
- Plan for sudden emergencies
- Hire a younger associate and pass the practice along; co-counsel with others
- Sell the Practice
- Make (and stick to) a file retention policy

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### Don't Let this Happen to You!



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**RULE 4-228 RECEIVERSHIPS**

(a) Definitions.  
 Absent Lawyer: A member of the State Bar of Georgia (or a Domestic or Foreign lawyer authorized to practice law in Georgia) who has disappeared, died, been disbarred, disciplined or incarcerated, become so impaired as to be unable to properly represent clients, or who poses such a substantial threat of harm to clients or the public that it is necessary for the Supreme Court of Georgia to appoint a receiver.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(b) Appointment of Receiver.  
 (1) Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that a lawyer has become an absent lawyer, and that no partner, associate, or other appropriate representative is available to notify his clients of this fact, the Supreme Court of Georgia may order that a member or members of the State Bar of Georgia be appointed as receiver to take charge of the absent lawyer's files and records.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

Such receiver shall review the files, notify the absent lawyer's clients and take such steps as seem indicated to protect the interests of the clients and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his partners, associates, or legal representatives or by the State Bar of Georgia.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(2) If the receiver should encounter, or anticipate, situations or issues not covered by the order of appointment, including but not limited to, those concerning proper procedure and scope of authority, the receiver may petition the Supreme Court of Georgia for such further order or orders as may be necessary or appropriate to address the situation or issue so encountered or anticipated.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(3) The receiver shall be entitled to release to each client the papers, money, or other property to which the client is entitled. Before releasing the property, the receiver may require a receipt from the client for the property.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(c) Applicability of Lawyer-Client Rules.

(1) Confidentiality. The receiver shall not be permitted to disclose any information contained in the files and records in his care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia or, upon application, by order of the Supreme Court of Georgia.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(2) Lawyer-Client Relationship; Privilege. The receiver relationship standing alone does not create a lawyer-client relationship between the receiver and the clients of the absent lawyer. However, the lawyer-client privilege shall apply to communications by or between the receiver and the clients of the absent lawyer to the same extent as it would have applied to communications by or to the absent lawyer.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(d) Trust Account.

(1) If after appointment the receiver should determine that the absent lawyer maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the receivership to include the management of the said trust account or accounts.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

In the event the scope of the receivership is extended to include the management of the trust account or accounts, the receiver shall file quarterly with the Supreme Court of Georgia or its designee a report showing the activity in and status of said accounts.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(2) Service on a bank or financial institution of a copy of the order extending the scope of the receivership to include management of the trust account or accounts shall operate as a modification of any agreement of deposit among such bank or financial institution, the absent lawyer and any other party to the account so as to make the receiver a necessary signatory on any trust account maintained by the absent lawyer with such bank or financial institution.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

The Supreme Court of Georgia or its designee, on application by the receiver, may order that the receiver shall be sole signatory on any such account to the extent necessary for the purposes of these Rules and may direct the disposition and distribution of client and other funds.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(3) In determining ownership of funds in the trust accounts, including by subrogation or indemnification, the receiver should act as a reasonably prudent lawyer maintaining a client trust account.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

The receiver may (i) rely on a certification of ownership issued by an auditor employed by the receiver; or (ii) interplead any funds of questionable ownership into the appropriate Superior Court; or (iii) proceed under the terms of the Disposition of Unclaimed Property Act (OCGA § 44-12-190 et seq.).

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

If the absent lawyer's trust account does not contain sufficient funds to meet known client balances, the receiver may disburse funds on a pro rata basis.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(e) Payment of Expenses of Receiver.

(1) The receiver shall be entitled to reimbursement for actual and reasonable costs incurred by the receiver for expenses, including, but not limited to, (i) the actual and reasonable costs associated with the employment of accountants, auditors, and bookkeepers as necessary to determine the source and ownership of funds held in the absent lawyer's trust account, and (ii) reasonable costs of secretarial, postage, bond premiums, and moving and storage expenses associated with carrying out the receiver's duties.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

Application for allowance of costs and expenses shall be made by affidavit to the Supreme Court of Georgia, or its designee, who may determine the amount of the reimbursement.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

The application shall be accompanied by an accounting in a form and substance acceptable to the Supreme Court of Georgia or its designee. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be paid to the receiver by the State Bar of Georgia.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

The State Bar of Georgia may seek from a court of competent jurisdiction a judgment against the absent lawyer or his or her estate in an amount equal to the amount paid by the State Bar of Georgia to the receiver. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be considered as prima facie evidence of the fairness of the amount, and the burden of proof shall shift to the absent lawyer or his estate to prove otherwise.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(e)(2) The provision of paragraph (e)(1) above shall apply to all receivers serving on the effective date of this Rule and thereafter.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(f) Receiver-Client Relationship. With full disclosure and the informed consent, as defined in Rule 1.0 (l), of any client of the absent lawyer, the receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(g) Unclaimed Files. (1) If upon completion of the receivership there are files belonging to the clients of the absent lawyer that have not been claimed, the receiver shall deliver them to the State Bar of Georgia. The State Bar of Georgia shall store the files for six years, after which time the State Bar of Georgia may exercise its discretion in maintaining or destroying the files.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(2) If the receiver determines that an unclaimed file contains a Last Will and Testament, the receiver may, but shall not be required to do so, file said Last Will and Testament in the office of the Probate Court in such county as to the receiver may seem appropriate.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(h) Professional Liability Insurance. Only lawyers who maintain errors and omissions insurance, or other appropriate insurance, may be appointed to the position of receiver.

(i) Requirement of Bond. The Supreme Court of Georgia or its designee may require the receiver to post bond conditioned upon the faithful performance of his duties.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(j) Immunity. (1) The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and the appointed receiver to be within the Court's regulatory function, and being regulatory in nature, the State Bar of Georgia and the receiver are entitled to that immunity customarily afforded to court-appointed receivers.

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**RULE 4-228 RECEIVERSHIPS (cont'd)**

(2) The immunity granted in paragraph (j) (1) above shall not apply if the receiver is employed by a client of the absent lawyer to continue the representation.

(k) Service. Service under this Rule may be perfected under Rule 4-203.1.

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**Navigating the Cessation of a Practice**

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**Resources for Navigating the Rules**

**Ethics Helpline**

- Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log in and submit your question by email. Members of the public who believe that a Georgia lawyer has violated the rules of ethics should contact the Bar's Consumer Assistance Program at 800-334-6865.

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**Rule 1.1 COMPETENCE**

- A lawyer shall provide competent representation to a client. Competent representation as used in this rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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**RULE 1.3 DILIGENCE**

- A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

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**RULE 1.4 COMMUNICATION**

- a. A lawyer shall:
  - 1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (h), is required by these rules;
  - 2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - 3. keep the client reasonably informed about the status of the matter;

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**RULE 1.4 COMMUNICATION**

- 4. promptly comply with reasonable requests for information; and
- 5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law.

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**RULE 1.4 COMMUNICATION (cont'd)**

- b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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**RULE 1.6 CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the court.

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**RULE 1.6 CONFIDENTIALITY OF INFORMATION (cont'd)**

(v) to detect and resolve conflicts of interest arising from the lawyer's change of employment or changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

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**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE**

(a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

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**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE  
(cont'd)**

(b) If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:

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**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE  
(cont'd)**

1. consultation with the lawyer, pursuant to Rule 1.0 (c);
2. having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation, and
3. having been given the opportunity to consult with independent counsel.

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**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE  
(cont'd)**

- (c) Client informed consent is not permissible if the representation:
- 1) is prohibited by law or these rules;
  - 2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
  - 3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

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**RULE 1.15(II)(a) SAFEKEEPING PROPERTY –TRUST ACCOUNT AND IOLTA**

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts as required by these rules.

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**RULE 1.15(II)(a) SAFEKEEPING PROPERTY –TRUST ACCOUNT AND IOLTA**

All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from a trust account.

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**Navigating File Retention and Destruction**

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**Solutions to the Problem**

- Have a firm-wide file retention policy with procedure for regularly culling old files for destruction and train all firm personnel on the policy.
  - Guidance can be obtained from your malpractice carrier or the Ethics Hotline.
- Establish a systematic procedure for reviewing and returning client files or property when the matter is closed.
- Destruction process should be overseen by a lawyer.
- Keep a record of all file dispositions.

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**Solutions to the Problem**

**Include file destruction provisions in the retainer agreement & termination letter.**

- Client consents to destruction on stated timeline
- Notify Client when file ready for pick up at conclusion of representation
- Fix the amount of time Client has to pick up the file
- Duty of Client to obtain physical possession of file
- Consequences of Client failure to retrieve file (subject to destruction)
- Option to pay for storage – forever ?? (whose rights after the client dies?)

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**Other Solutions to the File Problem**

**Exit Letters and “Late Notice”**

- Add file destruction notice in Client Exit/Termination Letter
- “Cleaning House” Letter to Client months/years later
- What is effective notice to deceased client (or dissolved entity)?
- Fix the amount of time Client has to pick up the file
- Can you destroy unclaimed file absent written client consent?

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