

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on October 21, 2024, the following order was made and entered:

**RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO RULE 14  
OF THE ADMINISTRATIVE RULES OF THE WEST VIRGINIA STATE  
BAR, No. 21-Rules-08**

On October 16, 2024, the Court considered proposed amendments to Rule 14 of the Administrative Rules of the West Virginia State Bar. The Court has jurisdiction of court rules under Article VIII, §§ 1 and 3 of the West Virginia Constitution.

Upon consideration and review, the Court is of the opinion that the following amendments to Rule 14 of the Administrative Rules of the West Virginia State Bar should be published for a period of public comment for 30 days. Comments may be filed in writing with the office of the clerk on or before November 20, 2024. Additions are indicated by underscoring, and deletions are indicated by strike-through.

Administrative Rules of the West Virginia State Bar

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### **Rule 14 Succession planning**

#### **14.01 Successor designations**

The duty of diligence may ~~require~~ requires that an active member of the West Virginia State Bar who is operating ~~as a sole practitioner in private practice as a sole practitioner or in a law firm or legal entity of five (5) or fewer lawyers,~~ prepare a written succession plan specifying what steps must be taken in the event ~~that the member is unable to continue their law practice due to death or disability of the member's death, disability, impairment, incapacity, or any other reason that would prohibit the practitioner from practicing law.~~ See West Virginia Rules of Professional Conduct, Rule 1.3, Comment 5. A~ part of any succession plan, a lawyer ~~should~~ shall arrange for one or more successor lawyers to protect the interests of the lawyer's clients in the event of ~~death or any disability that precludes practicing law~~ the member's death, disability, or any other reason that would prohibit the practitioner from practicing law. Such designation ~~may~~ shall set out a feesharing arrangement with the successor lawyer or lawyers. Nothing in this rule or the lawyer's designation shall prevent a client from seeking and retaining a different lawyer or law firm. Any lawyer to be designated as a successor must consent to the designation.

## **14.02 Definitions**

(a) “Practitioner” means a lawyer who is not affiliated with any other attorney or law firm, or is a lawyer in a law firm or legal entity of five (5) or fewer lawyers, who represents clients in the private practice of law. For purposes of this rule, an individual is in private practice when a lawyer represents clients, with or without compensation. Representation includes: to advise another in any matter involving the application of legal principles to facts, purposes, or desires; to prepare for another legal instruments of any character; or to represent the interest of another before any judicial tribunal or officer or any executive or administrative tribunal, agency, or officer other than in the presentation of facts, figures, or legal conclusions as distinguished from legal conclusions in respect to such facts and figures.

The definition of “Practitioner” is not intended to apply to:

(1) Lawyers who serve as a full-time government lawyer or in-house counsel and do not represent clients outside that capacity;

(2) Lawyers that serve solely as a third-party neutral, such as an arbitrator or mediator, in a nonrepresentational role to help parties to resolve a dispute or other matter;

(3) Prosecuting attorneys, special prosecuting attorneys, assistant prosecuting attorneys and special assistant prosecuting attorneys;

(4) Public Defenders, and counsel appointed by the Court to represent indigent criminal defendants, juveniles, incapacitated or incompetent adults or parties in abuse and/or neglect proceedings; and

(5) Those acting by virtue of court appointment as guardian ad litem, mental hygiene commissioner or other commissioners or special commissioners such as a Circuit Court is statutorily empowered to appoint.

Any lawyer who, in addition to practicing in one of the enumerated exceptions, maintains a practice involving the representation of clients that do not fit into one of these enumerated exceptions must still comply with this rule with respect to that portion of the lawyer’s practice.

(b) “Successor Lawyer” means an active or inactive member of the West Virginia State Bar who is appointed by a sole practitioner or by a lawyer in a law firm or legal entity of five or fewer lawyers to know the point of contact to safeguard, or arrange for the safeguarding, of clients’ interests in the event of the practitioner’s death, disability, impairment, incapacity, or any other reason that would prohibit the practitioner from practicing law.

## **14.03 Scope of Administration**

At a minimum, the successor lawyer should take all actions necessary to safeguard or arrange for the safeguarding of clients’ interests including, but not limited to, contacting and updating the clients, assisting the clients with finding new counsel, distributing client property or funds, seeking court intervention if needed, or any other acts necessary to safeguard the clients’ interests. The scope of administration may also include the sale, purchase and/or closure of the practitioner’s practice or any other terms or conditions agreed upon by and between the practitioner and successor lawyer. In order to safeguard the clients’ interests, the successor lawyer should have access to, at a minimum, the point of contact for the practitioner’s clients, client files and client property; the point of contact for access to the practitioner’s office, calendar, client trust account

and other bank accounts; and access to the point of contact for or access to any other property or things necessary to safeguard or arrange for the safeguarding of the clients' interests.

**14.02 ~~14.04~~ Registry of successor designations**

The West Virginia State Bar shall maintain a registry of successor designations and identify the existence of a member's succession plan as part of the Bar membership information. Active members who are operating as sole practitioners or in a law firm or five or fewer attorneys shall disclose to the State Bar ~~whether they have a designated successor and a succession plan. Such disclosure shall be made~~ annually on or before July 1 and submit in the form required by the State Bar the following information:

(a) Whether the active member has a written succession plan. and

(b) Whether the active member has designated a successor lawyer and whether the successor lawyer has accepted the designation.

It is the duty of every active member to report within ten (10) days any changes to the successor lawyer designation.

**14.03 ~~14.05~~ Responsibility for costs if court-appointed trustee is required**

If a trustee is appointed for a deceased or disabled lawyer under Rule 3.29 of the Rules of Lawyer Disciplinary Procedure, and no successor designation is on record for that lawyer as part of the State Bar membership registry, then the lawyer, or the lawyer's estate, shall be adjudged responsible for payment of the reasonable and necessary fees and costs of the trustee that are assessed by the appointing court pursuant to Rule 3.29. To the extent that the trustee's fees, costs, and expenses are paid by the Office of Disciplinary Counsel or other third party, the lawyer or the estate shall be liable to make reimbursement for such payment or payments.

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A True Copy

Attest: /s/ C. Casey Forbes  
Clerk of Court

