

## **MONROE COUNTY BAR ASSOCIATION LAWYER SUCCESSION REGISTRY GUIDELINES**

### **SUMMARY OF REGISTRY:**

The "Lawyer Succession Registry" is a program which seeks to encourage and enable lawyers to plan for law practice contingencies by designating in advance another lawyer who is willing to assist in the transfer of client files in the event of disability, death or unavailability of the registering lawyer. It is envisioned that the program will be a benefit to MCBA members free of charge.

#### **1. What is the "Lawyer Succession Registry?"**

A "Lawyer Succession Registry" is a confidential database which will be maintained by the MCBA staff. The information contained in the database will be obtained from each registering lawyer for the purpose of transitioning that lawyer's client files to the client, or to a lawyer of the client's choosing, in the event of a registrant's death, disability, incapacity, disbarment, suspension, disappearance, termination of practice or retirement. Each registering lawyer will provide the name, address and contact information of a "designee" lawyer whose sole responsibility will be to assist the clients of the registrant in locating and obtaining their files and other property (i.e. Last Will and Testament) in the event of the contingencies previously described. The registering lawyer will complete an Application Form in order to participate in the program; a copy of the proposed Application Form is attached.

The "Lawyer Succession Registry" is not a transferring of legal representation from one attorney to another, nor does the Registry convey any representation responsibility to the Designee attorney.

In order to access the database, a person must complete and submit to the MCBA, an "Information Request Form" identifying his or her relationship to the lawyer for whom they seek the information (i.e. client, former client, attorney for client, attorney for former client, etc.). The MCBA will release the identity and contact information of the "designee" lawyer only after the identity of the requesting individual is confirmed by photo identification. Both the Application form and the Information Request Form state that the MCBA has no obligation to contact the "designee" lawyer in the event of the registrant lawyer's death, disability or unavailability.

#### **2. What are the benefits of the "Lawyer Succession Registry:"**

The benefits of the "Lawyer Succession Registry" are many and include:

- a. Fostering good lawyer practice by assisting lawyers to plan in advance for contingencies that prevent them from practicing law. Ultimately the client shall benefit.
- b. Fostering confidence in the legal profession and elevating the public's opinion of

lawyers.

c. Assisting the lawyer's spouse and/or family in the event of the disability, death or unavailability of the lawyer. Often times the lawyer's spouse and/or family members become responsible by default for transitioning client files.

d. Enabling lawyers to reduce the cost of their malpractice insurance to the extent that companies provide discounts for enrolling in such programs.

e. Providing a program which provides guidance to lawyers in the absence of any New York State rule or regulation.

f. Could possible serve as an impetus for lawyers to engage in further advance planning with respect to transitioning their practice upon disability, death or unavailability (i.e. enter into a fee sharing agreement with other lawyers upon disability, death or unavailability).

### **3. What is the charge/fee for participating in the "Lawyer Succession Registry:**

Participation is free to MCBA members. Participation for non-MCBA members will be at a cost of \$50 to initially register and \$20 for renewal and/or changes to the Registry.

### **4. What is the Application Process for an Applicant to join the Registry?**

See the Application Form

Methods of submission:

Written

Upon registration with the Registry, the MCBA shall provide the Registry attorney the recommendation that he/she input into his/her retainer agreements and letters of engagement for new clients that "in the event of the attorney incapacity or death, the client should contact the Monroe County Bar Association, One West Main Street, 10<sup>th</sup> Floor, Rochester, New York 14614, (585) 546-1817, for information for the Designee attorney for transfer of the client's file."

Upon registration with the Registry, the MCBA shall provide the Registry attorney the recommendation that he/she send a letter to all existing clients that "in the event of the attorney incapacity or death, the client should contact the Monroe County Bar Association, One West Main Street, 10<sup>th</sup> Floor, Rochester, New York 14614, (585) 546-1817, for information for the Designee attorney for transfer of the client's file." A form letter would be provided.

Upon registration with the Registry, provide the Registry attorney the recommendation that he/she maintain a list, as current as possible, with respect to current and former clients to assist

the Designee attorney in transferring files in the event of need.

## **5. What is the Process to obtain Registry Information?**

See "Request for Information" Form

### Security/Access to the Registry:

We envision requests for Registry information from the following:

- Former/pending client
- Other attorney (opposing counsel in current, pending or former matter)
- Successor Designee attorney
- Court inquiry/request
- Legal representative of estate or incapacitated attorney
- Malpractice insurer
- Spouse/family member/domestic partner

In general, for all but an inquiry from a Court or the Designee Attorney, only the Designee lawyer information shall be released, upon written inquiry (dated and with photo/government ID). For an inquiry from the Court or Designee Attorney, in writing, the entire Registry form information for the attorney shall be provided (dated request with Court order or photo/government ID, as applicable).

An "Information Request Form" is provided. Information shall only be provided upon written application, with photo/government ID or Court order (as applicable). Paralegals, legal services, delivery services shall not be permitted to obtain Registry information, even with attorney authorization (the requesting party must appear and complete the request for information form and provide ID as applicable).

The client of a Registry attorney need not authorize access of the Registry information to the Designee Attorney, nor does the client need to authorize the access of the Designee Attorney for access to the client's file simply for the transmittal of the file upon an attorney's death, etc. The Designee Attorney is not automatically becoming the client's new attorney. The attorney who has signed up with the Registry has authorized the access of the Designee Attorney for this action (transmittal of the file). MCBA is only keeping a list/database.

The Registry was reviewed by the Ethics Committee of the MCBA.

The client is not required to use the Designee Attorney as his/her next attorney. To assure that the client is not "confused" or "assumes" the Designee Attorney is now representing him/her, two "protections" have occurred:

1. On the “request form” if a client seeks Registry information as to who the Designee Attorney is, the form clearly states that the Registry information is for informational purposes only, does not confer any new attorney-client relationship, and the client is not required or assumed to have the Designee Attorney as his/her new attorney.

2. A “form letter” shall be available to the Designee Attorney to attach to each file/each correspondence to the client, stating: “I am the Designee Attorney for (name), who is no longer in the active practice of law. Please be advised that as the Designee Attorney, I am only helping to deliver the file to you. You do not have to retain me as your new attorney for pending or future legal services.”

Upon a written “Information Request from the Confidential Lawyer Succession Registry” with appropriate ID (copied and attached to the request form) submitted to the MCBA, the written request shall be reviewed by any of the following: MCBA Executive Director, President, President-Elect, Secretary. Only approval/denial of the request by one of the above-listed shall be necessary and said approval/denial shall be noted on the back of the information request form. Failure to provide the appropriate ID (or Court order) shall be deemed a basis for automatic denial. A request by anyone not on the ID (or as directed by Court order) shall be deemed a basis for automatic denial.

## **6. What is the maintenance/review process?**

- Periodic database maintenance
- Periodic review (Renewal process with members, database integrity)
- Solicitation for Registry every year with MCBA membership renewal
- Send notices for updates to Registry participants

### Reports to be generated from Registry:

- Names of Registrants
- Number of Registry members;
- Registrant statistical information: Date of first application; dates of renewal;
- Requests for Registry information