**4.1 AGREEMENT TO CLOSE LAW PRACTICE -- FULL FORM**

***(Sample — Modify as appropriate)***

The sample *Agreement to Close Law Practice –Full Form* provided on the next page gives the Successor Counsel the power to determine if you are disabled, impaired, or incapacitated and provides the Successor Counsel with authority under the designated circumstances to sign on your bank accounts (including your trust account) and to close your law practice. The agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

If you do not want the Successor Counsel to be the person who determines if you are disabled, incapacitated, or impaired, you will need to modify this agreement. For a discussion of alternatives, see Chapter 1 of this handbook.

**AGREEMENT TO CLOSE LAW PRACTICE**

Between:      , hereinafter referred to as “Affected Attorney,”

and:      , hereinafter referred to as “Successor Counsel.”

**1. Purpose.**

The purpose of this agreement is to protect the legal interests of the clients of Affected Attorney in the event Affected Attorney is unable to continue Affected Attorney’s law practice due to death, disability, impairment, or incapacity.

**2. Parties.**

The term *Successor Counsel* refers to the attorney designated in the caption above or the Successor Counsel’s alternate. The term *Affected Attorney* refers to the attorney designated in the caption above and the Affected Attorney’s representatives, heirs, or assigns.

**3. Establishing Death, Disability, Impairment, or Incapacity.**

In determining whether Affected Attorney is dead, disabled, impaired, or incapacitated, Successor Counsel may act upon such evidence as Successor Counsel shall deem reasonably reliable, including, but not limited to, communications with Affected Attorney’s family members, representative, or a written opinion of one or more medical doctors duly licensed to practice medicine. Similar evidence or medical opinions may be relied upon to establish that Affected Attorney’s disability, impairment, or incapacity has terminated. Successor Counsel is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement. . I authorize Successor Counsel to review my medical records, reports and charts and to consult with any secure information from treating physicians and employ other medical personnel on my behalf as said attorney-in-fact may deem necessary to assist him/her in establishing my disability, impairment or incapacity, or in verifying my death.

HIPAA Release Authority. I intend for Successor Counsel to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160‑164. I authorize:

* any physician, healthcare professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Information Bureau Inc. or other health care clearinghouse that has provided treatment or services to me or that has paid for or is seeking payment from me for such services to give, disclose, and release to my agent, without restriction; and
* all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The authority given my agent shall supersede any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

**4. Consent to Close Practice.**

Affected Attorney hereby gives consent to Successor Counsel to take all actions necessary to close Affected Attorney’s legal practice in the event that Affected Attorney is unable to continue in the private practice of law and Affected Attorney is unable to close Affected Attorney’s own practice due to death, disability, impairment, or incapacity. Affected Attorney hereby appoints Successor Counsel as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as Affected Attorney could do personally if Affected Attorney were able. It is Affected Attorney’s specific intent that this appointment of Successor Counsel as attorney-in-fact shall become effective only upon Affected Attorney’s death, disability, impairment, or incapacity. The rights, powers, and authorities of Successor Counsel shall commence only upon my disability as hereinafter defined and shall remain in full force thereafter until said disability is terminated. Disability shall be defined as my being incapacitated so as to make it impossible or impracticable for me to give prompt and intelligent consideration to business matters. For the purposes of the exercise of this general power by my attorney-in-fact, my disability shall be conclusively determined by a written declaration of my disability by a board certified physician to me and my attorney-in-fact, which shall be attached to this Power of Attorney. The appointment of Successor Counsel shall not be invalidated because of Affected Attorney’s death, disability, impairment, or incapacity, but instead the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Affected Attorney’s death, disability, impairment, or incapacity, Affected Attorney designates Successor Counsel as signator, or in substitution of Affected Attorney’s signature, on all of Affected Attorney’s law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts, and trust accounts. Affected Attorney’s consent includes but is not limited to:

• Entering Affected Attorney’s office and using Affected Attorney’s

 equipment and supplies as needed to close Affected Attorney’s practice;

• Opening Affected Attorney’s mail and processing it;

• Taking possession and control of all property comprising Affected Attorney’s

 law office, including client files and records;

• Examining files and records of Affected Attorney’s law practice and obtaining

 information as to any pending matters that may require attention;

• Notifying clients, potential clients, and others who appear to be clients, that

 Affected Attorney has given this authorization and that it is in their best interest

 to obtain other legal counsel;

• Copying Affected Attorney’s files;

• Obtaining client consent to transfer files and client property to new attorneys;

• Transferring client files and property to clients or their new attorneys;

• Obtaining client consent to obtain extensions of time and contacting opposing

 counsel and courts/administrative agencies to obtain extensions of time;

• Applying for extensions of time pending employment of other counsel by the

 clients;

• Filing notices, motions, and pleadings on behalf of clients where the clients’

 interests must be immediately protected and other legal counsel has not yet

 been retained;

• Contacting all appropriate persons and entities who may be affected, and

 informing them that Affected Attorney has given this authorization;

• Arranging for transfer and storage of closed files;

• Winding down the financial affairs of Affected Attorney’s practice, including

 providing Affected Attorney’s clients with a final accounting and statement for

 services rendered by Successor Counsel, return of client funds, collection of fees

 on Affected Attorney’s behalf or on behalf of Affected Attorney’s estate, payment

 of business expenses, and closure of business accounts when appropriate;

• Advertising Affected Attorney’s law practice or any of its assets to find a buyer

 for the practice; and

• Arranging for an appraisal of Affected Attorney’s practice for the purpose of

 selling Affected Attorney’s practice.

 Affected Attorney’s bank or financial institution may rely on the authorizations in

 the Agreement unless such bank or financial institution has actual knowledge

 that this Agreement has been terminated or is no longer in effect.

**5. Payment for Services.**

Affected Attorney agrees to pay Successor Counsel a reasonable sum for services rendered by Successor Counsel while closing the law practice of Affected Attorney. Successor Counsel agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Successor Counsel agrees to provide the services specified herein as an independent contractor.

**6. Preserving Attorney-Client Privilege.**

Successor Counsel agrees to preserve confidences and secrets of Affected Attorney’s clients and their attorney-client privilege and shall only make disclosures of information reasonably necessary to carry out the purpose of this Agreement.

**7. Successor Counsel is Attorney for Affected Attorney** (delete one of the following paragraphs as appropriate).

Successor Counsel is the attorney for Affected Attorney. Successor Counsel will protect the attorney-client relationship and follow the Arizona Rules of Professional Conduct. (

OR:

**Successor Counsel is Not Attorney for Affected Attorney**

Successor Counsel is not the attorney for Affected Attorney. (**Optional:** Successor Counsel has permission to inform the Professional Liability Fund of errors or potential errors of Affected Attorney, may inform Affected Attorney’s former clients of any errors or potential errors, and instruct them to obtain independent legal advice. Successor Counsel also has permission to inform Affected Attorney’s former clients of any ethics violations committed by Affected Attorney.)

**8.** **Providing Legal Services.**

Affected Attorney authorizes Successor Counsel to provide legal services to Affected Attorney’s former clients providing Successor Counsel has no conflict of interest and obtains the consent of Affected Attorney’s former clients to do so. Successor Counsel has the right to enter into an attorney-client relationship with Affected Attorney’s former clients and to have clients pay Successor Counsel for his or her legal services. Successor Counsel agrees to check for conflicts of interest, and when necessary, to refer the clients to another attorney.

**9. Informing State Bar of Arizona.**

Successor Counsel agrees to inform the State Bar of Arizona where Affected Attorney’s closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

**10. Providing Clients with Accounting.**

Successor Counsel agrees to provide Affected Attorney’s former clients with a final accounting and statement for legal services of Affected Attorney based on the Affected Attorney’s records. Successor Counsel agrees to return client funds to Affected Attorney’s former clients and to submit funds collected on behalf of Affected Attorney to Affected Attorney or Affected Attorney’s estate representative.

**11. Successor Counsel Alternate** (delete one of the following paragraphs as appropriate).

If Successor Counsel is unable or unwilling to act on behalf of Affected Attorney, Affected Attorney appoints as Successor Counsel’s Alternate, hereinafter

known as Successor Counsel’s Alternate. Successor Counsel’s Alternate is authorized to act on behalf of Affected Attorney pursuant to this Agreement. Successor Counsel’s Alternate shall comply with the terms of this Agreement. Successor Counsel’s Alternate consents to this appointment, as shown by the signature of the Successor Counsel’s Alternate on this Agreement.

OR:

If Successor Counsel is unable or unwilling to act on behalf of Affected Attorney, Successor Counsel may appoint an alternate. Successor Counsel shall enter into an agreement with any such Successor Counsel’s Alternate under which Successor Counsel’s Alternate consents to the terms and provisions of this Agreement.

**12. Indemnification.**

Affected Attorney agrees to indemnify Successor Counsel against any claims, loss, or damage arising out of any act or omission by Successor Counsel under this agreement, provided the actions or omissions of Successor Counsel were made in good faith, were made in a manner reasonably believed to be in Affected Attorney’s best interest, and occurred while Successor Counsel was Successor Affected Attorney with the closure of Affected Attorney’s office. This indemnification agreement does not extend to any acts, errors, or omissions of Successor Counsel while rendering or failing to render professional services in Successor Counsel’s capacity as attorney for the former clients of Affected Attorney. Successor Counsel shall be responsible for all acts and omissions of gross negligence and willful misconduct.

**13. Option to Purchase Practice.**

Successor Counsel shall have the first option to purchase the practice of Affected Attorney under the terms and conditions specified by Affected Attorney or Affected Attorney’s representative in accordance with the Arizona Rules of Professional Conduct and other applicable law.

**14. Arranging to Sell Practice.**

If Successor Counsel opts not to purchase Affected Attorney’s practice, Successor Counsel will make all reasonable efforts to sell Affected Attorney’s practice and will pay Affected Attorney or Affected Attorney’s estate all monies received.

**15. Fee Disputes to be Arbitrated.**

Affected Attorney and Successor Counsel agree that all fee disputes between them will be decided by the Arizona State Bar Fee Arbitration Program.

**16. Termination.**

This Agreement shall terminate upon: (1) delivery of written notice of termination by Affected Attorney to Successor Counsel during any time that Affected Attorney is not under disability, impairment, or incapacity as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Affected Attorney’s representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Successor Counsel to Affected Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Successor Counsel pursuant to this Agreement. If Successor Counsel or Successor Counsel’s Alternate for any reason terminates this agreement or is terminated, Successor Counsel or Successor Counsel’s Alternate acting on his or her behalf shall (1) provide a full and accurate accounting of financial activities undertaken on Affected Attorney’s behalf within 30 days of termination or resignation and (2) provide Affected Attorney with Affected Attorney’s files, records, and funds.

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| [Affected Attorney] | Date |
| STATE OF ARIZONA ) ) ss.County of      ) |  |
| This instrument was acknowledged before me on      (date) by     (name(s) of person(s)). |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | NOTARY PUBLIC FOR ARIZONA |
|  | My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| [Successor Counsel] | Date |
| STATE OF ARIZONA ) ) ss.County of      ) |  |