

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 89-18**

Issued June 16, 1989

*[Not Current- subsequent rule amendments to Gov. Bar R. V; for inventory of files see Gov. Bar R. V §8 (F), eff. Jul. 1, 1992]*

**SYLLABUS:** The Office of Disciplinary Counsel or chairman of a local bar association's certified grievance committee may appoint an attorney to handle client files of another attorney who dies, resigns, is suspended or disbarred, refuses to meet or work with clients for sixty days or cannot be located for sixty days, when no one else is available or willing to handle the files. The appointed attorney may be paid reasonable fees for his services with the approval of the Secretary to the Board of Commissioners. The files of those clients who cannot be located, after diligent effort, may be destroyed after five years by the Disciplinary Counsel or local bar association.

**OPINION:** We have before us a request from a bar association which has client files of several attorneys who have either died, resigned or were suspended from the practice of law. The bar association is asking this Board what should be done with these files. The answer to their question lies in Governing Bar Rule V §22.

A suspended attorney or an attorney who resigns from the practice must comply with the Supreme Court order of suspension under Gov. Bar R. V §22 (b). Suspended attorneys or attorneys who resign are required by this rule to inform their clients of the resignation or suspension and, urge their clients to seek other counsel. Attorneys who are suspended or who resign must also return their clients' files regardless of any fee dispute.

If an attorney fails to comply with Gov. Bar R. V §22 (b) and no other person is available or willing to conduct the attorney's affairs the Disciplinary Counsel or Chairman of a local bar association's certified grievance committee may then appoint an attorney to protect the interests of the clients. Gov. Bar R. V §22 (c). This includes authorization of any actions necessary under Gov. Bar R. V §22(b) or to protect the interests of the clients.

The same appointment procedure can be used when an attorney dies, cannot be found in the jurisdiction for sixty days, or refuses to meet or work with clients for sixty days. Appointing someone is not necessary when a partner, executor or other responsible person capable of conducting the attorney's affairs is available and willing to assume the appropriate responsibility.

An attorney appointed to handle another attorney's affairs may be paid reasonable fees for the attorney's services upon an approval of the Secretary of the Board. The appointed attorney shall not, except as necessary to carry out the order of the appointment, disclose any information contained in inventoried files without the written consent of the client involved. Gov.Bar R. V §22(b). The rule prohibits the appointed attorney from representing any of the clients. Id.

If, after diligent effort, the appointed attorney is unable to locate a client for whom he has files, the appointed attorney should return the files to the appointing authority. The Disciplinary Counsel or the local bar association, which now has the files, may destroy them five years from the time the appointed attorney returned the files.

In conclusion, the clients of attorneys who die, resign, are suspended or disbarred or who refuse to meet or work with clients or cannot be located for sixty days must be protected. The Office of Disciplinary Counsel or the chairman of a local bar association's certified grievance committee may appoint an attorney to handle the affairs of the attorney in question, if no one else is available or willing to do so. The appointed attorney may be paid reasonable fees for his services, with the approval of the Secretary to the Board. The files of a client who cannot be located may be destroyed by the Disciplinary Counsel or local bar association after five years.

**This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Governing Bar Rules of the Supreme Court of Ohio.**