

CHECKLIST FOR HANDLING A DECEASED CLIENT'S LEGAL MATTER

When a client you're currently representing passes away during the representation, it typically brings an end to the attorney-client relationship. Consequently, the lawyer's authority to act on behalf of the client is also terminated. For any action a lawyer takes on behalf of the deceased client, authorization must be obtained from the decedent's personal representative. This checklist offers some guidance on steps you should take in the event of your client's death.

1. **Notify** – Promptly inform the court, tribunal, or adjudicative authority and the opposing counsel or opposing party (if unrepresented) of the client's death. This should be done in the first communication after you have learned of the client's passing.ⁱ
2. **Clarify the client's situation** – Confirm the current status of any ongoing legal matter involving the client. Identify key case details that may require follow-up and take steps to the extent reasonably practicable to protect the client's interests.
3. **Assess the survivability of the case** – For pending litigation matters or any matter before a tribunal, assess whether the cause of action or client's interest in the matter can survive their death and, if so, determine how to preserve them. Also determine whether you can or want to continue with the representation. Consider: (1) the impact of the client's death on any statute of limitations or deadlines in their matter; (2) your ability to continue with the representation in light of the client's death and their availability to testify; and (3) any challenges or issues that may affect the case due to the client's death.
4. **Evaluate options** – Depending on the case's survivability and your willingness or ability to continue with the representation, evaluate the following options:
 - a. The matter survives, and you want to continue;
 - b. The matter survives, but you don't want to continue;
 - c. The matter does not survive, so you can't continue.
5. **Option A: Continue representation:**
 - a. **Communicate with the family** – Contact the deceased client's family to discuss the steps for preserving the client's interest in the matter. Inquire if an estate has been or will be opened for the client. This helps identify who will act as the personal representative. This person will be authorized to make decisions on behalf of the deceased client's estate, including decisions related to the legal representation.
 - b. **Seek consent for continued representation** – If an estate has not yet been opened, ask the family for written consent to continue the representation until a personal representative is appointed. Once the estate is opened, consult with the personal representative regarding your continued representation. Document their consent in writing to avoid misunderstanding.
 - c. **File notice of substitution** – Prepare a notice to substitute the estate as the party in the matter if you are continuing with the representation. Make sure you understand the requirements for representing a deceased client's estate in the pending matter.
6. **Options B and C: Will not or cannot continue representation:**
 - a. **Notify** – Inform the family or personal representative that you will not or cannot continue with the representation and cease all work on the matter. If the client's

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interests in the matter survive the death, discuss how the family or personal representative will pursue the matter on behalf of the deceased client's estate without your involvement.

- b. Withdraw – File a notice of withdrawal.
 - c. Transfer client file – Return the client file and send a disengagement letter closing the file to the family or personal representative. If those individuals cannot be located, safeguard the file until they contact you. Do not provide the client file to a friend or relative if they are not entitled to it.
 - d. Handle financial matters – Address outstanding fees and billing issues. Refund any remaining money in the trust account to whomever is entitled to the client's property. If the funds cannot be returned for some reason, call the Oregon State Bar at .503.620.0222 x315 to determine whether the funds are unclaimed property and ask for guidance on how to handle them.
7. Protect confidentiality – Be cautious about confidentiality when family members request information about the client or their legal files. Your duty of confidentiality survives the client's death. *Swindler & Berlin v. United States*, 524 US 399 (1998). Ensure that the person is entitled to the information based on ethical guidelines. See ORPC 1.6(a) and ORPC 1.15-1(d).
 8. Document – Keep records of all actions taken in response to the client's death, including communication with the family, personal representatives, and other relevant parties. Document files and funds transferred to the family or personal representative.
 9. Keep a copy of the file – Before returning the client file, make a paper or digital copy of the file for yourself.
 10. Seek support – In challenging times, consider reaching out to the Oregon Attorney Assistance Program (www.aaap.org) for free and confidential support. Their services can help you navigate the impact of a deceased client.

IMPORTANT NOTICES

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ⁱ See “Death Is Not the End: Addressing Ethical Issues After the Death of a Client,” Linn Davis, *Oregon State Bar Bulletin*, August/September 2022, <https://www.osbar.org/bulletin/issues/2022/2022AugustSeptember/index.html?page=9>