

MEMORANDUM

To: All Bankruptcy Attorneys
FROM: Judge Pat E. Morgenstern-Clarren
RE: New Ohio Rules of Professional Conduct re duty of diligence
DATE: March 15, 2007

Recently, a number of lawyers have experienced different forms of disability, ranging from circumstances such as strokes to heart attacks to unanticipated surgery to disabling depression. I would like to emphasize that the new Ohio Rules of Professional Conduct include a duty of diligence (rule 1.3) which addresses this situation through comment 5:

To prevent neglect in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *Cf.* Rule V, Section 8(F) of the Supreme Court Rules for the Government of the Bar of Ohio.

While the comment specifically mentions sole practitioners, a thorough reading of the rules supports the conclusion that every lawyer should have a written plan in place for how to meet the duty of diligence, and the plan should be communicated to office staff or other trusted individuals.

Naturally, I hope that everyone enjoys good health. But professional obligations require that, despite that optimism, each attorney make plans for the legal well-being of his or her clients. Going forward, when an attorney asks for adjournments based on these kinds of situations, I will inquire into whether the attorney has a written plan addressing the situation.