

RICHARD C. STANLEY

STANLEY, REUTER, ROSS  
THORNTON & ALFORD, LLC

OUR FILE NO.  
72,900

909 Poydras Street, Suite 2500  
New Orleans, Louisiana 70112  
Telephone: 504-523-1580  
Facsimile: 504-524-0069

January 25, 2016

**VIA U.S. MAIL**

Honorable Bernette Johnson  
Chief Justice, Louisiana Supreme Court  
400 Royal Street, Suite 4200  
New Orleans, LA 70130-8102

**Re: Proposed Amendment by the House of Delegates to add  
Rule 1.19 to the Louisiana Rules of Professional Conduct**

Dear Chief Justice Johnson:

On June 11, 2015, the LSBA House of Delegates passed a Resolution to "Adopt Rule 1.19 of the South Carolina Rules of Conduct as Rule 1.19 of the Louisiana Rules of Professional Responsibility" (the "Resolution"). The Resolution was sponsored by Steven Durio, and is attached hereto for your reference as Exhibit A. On June 12, 2015, the LSBA Board of Governors also approved the Resolution. By motion, the LSBA House of Delegates also referred the proposed rule to the LSBA Rules of Professional Conduct Committee (the "RPCC") to review it for consistency and conformity with our existing Louisiana ethical rules.

The RPCC appointed a Subcommittee consisting of the undersigned (as Chair of the RPCC), Charles Plattsmier (as Chief Disciplinary Counsel), Larry Shea (LSBA Past-President), and Ed Walters (Chair of the LSBA Lawyers in Transition Committee) to study the matter. The Subcommittee met on three occasions, including on one occasion by telephone conference with the South Carolina ethics counsel to discuss the experience of South Carolina with their version of proposed Rule 1.19. The Subcommittee learned that, in practical operation, the South Carolina rule allows the designated successor attorney to operate in the nature of an "executor" with regard to the law practice of the deceased or disabled lawyer, and that South Carolina clients must still "accept" the designated successor as their attorney. The Subcommittee also believes that, because South Carolina permits a lawyer to sell a law practice, some of the practical concerns of the Subcommittee may not arise in South Carolina if the designated successor attorney is also the "purchaser" of the law practice.

After deliberation, the Subcommittee concluded unanimously that, as written, the language of proposed Rule 1.19 as set forth by the LSBA House of Delegates in the Resolution does not conform to existing Louisiana Rules of Professional Conduct. In particular, (1) in Louisiana a lawyer cannot unilaterally create an attorney-client relationship between a client and a successor lawyer without the prior consent of the client, and (2) a "fee sharing arrangement" with

January 25, 2015

Page 2

the successor lawyer would have to be consistent with Louisiana Rule 5.4(a)(2), even assuming client consent to the representation had been obtained. To conform to Louisiana's existing ethical rules, the House of Delegates' proposal would have to be substantially revised as follows:

(Proposed) Louisiana Rule 1.19

- (a) Lawyers should prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law.
- (b) As part of any succession plan, a lawyer may designate a lawyer to act as curator for the lawyer's law practice, subject to court approval, ~~arrange for one or more successor lawyers or law firms to assume responsibility for the interests of the lawyer's clients in the event of death or disability from practicing law. Such designation may set out a fee-sharing arrangement with the successor. Nothing in this rule or the lawyer's designation shall prevent the client from seeking and retaining a different lawyer or law firm that the successor.~~ The lawyer to be designated must consent to the designation.
- (c) A registry shall be maintained by the Louisiana State Bar Association. Each lawyer shall designate any successor lawyer on the lawyer's annual registration statement.

The RPCC as a whole adopted the recommendation of the Subcommittee.

Candidly, proposed Rule 1.19, as revised above, does not achieve the apparent objectives of the broader rule proposed by the LSBA House of Delegates in its Resolution, which apparently sought to (1) create an immediate attorney-client relationship between the clients of the deceased/disabled lawyer and the designated successor attorney, and (2) permit a fee-sharing agreement that may not conform to Louisiana Rule 5.4(a)(2). Also, because Louisiana has not adopted a "sale of practice" rule (*see* ABA Rule 1.17), there was a concern that proposed Rule 1.19 (before the modifications shown above) could be misconstrued as a substitute method for effectively selling a law practice in Louisiana effective upon a lawyer's disability or death. To achieve these objectives would require revision of other Louisiana rules, a point as to which our Committee takes no position at this time.

Nonetheless, the RPCC understands that solo law practitioners who suffer death or disability leave behind unique issues that often lead to negative consequences for their families, their clients and the courts. The RPCC feels that the modified rule suggested above in this letter could alleviate some of these issues, at least insofar as courts, clients and family members would find it beneficial to have a designated curator willing to serve in the event of a tragedy to handle the affairs of a stricken attorney.

January 25, 2015

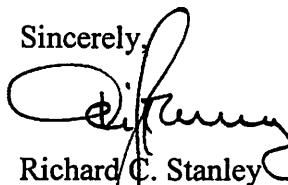
Page 3

As a final note, we add this observation. Due to the fact that the membership of our bar is aging rapidly, these issues are occurring with greater frequency. The LSBA has been working for several years to implement a system whereby, when a member dies or becomes unable to practice, we have a mechanism set up to have another bar member help the lawyer's clients, the lawyer's family and the local courts deal with these issues in a more seamless and organized manner. Part of the LSBA's plan has been to prepare a manual which includes a collection of forms which would afford the lawyer's clients, family and the local court some guidance. Currently, the courts, and the lawyers appointed by the courts to handle the deceased or disabled lawyer's practice, have little or no guidance as to how to deal with the myriad problems which arise. This effort remains a work-in-progress, but we wanted the Court be aware of it.

If we can be of further service to the Court, please let us know.

With kind regards, I am

Sincerely,



Richard C. Stanley  
Chair, Rules of Professional  
Conduct Committee

RCS/ar  
Enclosure

cc: Steven G. "Buzz" Durio, Esq.,  
Member of Rules of Professional Conduct Committee  
(via email and U.S. Mail w/ encl.)

**RESOLUTION OF THE LSBA HOUSE OF DELEGATES  
TO ADOPT RULE 1.19 OF THE  
SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT  
AS RULE 1.19 OF THE LOUISIANA RULES  
OF PROFESSIONAL RESPONSIBILITY**

WHEREAS, the Lawyers in Transition Committee has previously recommended that lawyers adopt written succession plans specifying what steps must be taken in the event of their death or disability from practicing law;

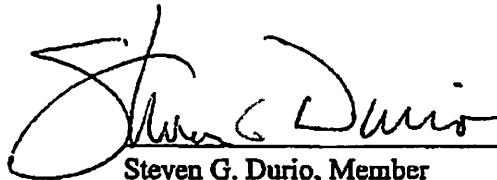
WHEREAS, this recommended procedure was adopted in July 2013 as part of the Rules of Professional Conduct in South Carolina, a copy of which is attached hereto as Exhibit 1.19; and

WHEREAS, the adoption of this Rule 1.19 in Louisiana would greatly benefit the practice of law by assisting and providing a vehicle for transition of many elderly lawyers and widowed spouses of lawyers, and in many other instances;

WHEREAS, there is no sufficient public policy or professional responsibility reason to deny the benefit of this recommended procedure to the clients of Louisiana lawyers, and/or their spouses and children;

THEREFORE, BE IT RESOLVED that the Association urge the Louisiana Supreme Court to adopt the attached proposed Rule 1.19 as Rule 1.19 of the Louisiana Rules of Professional Responsibility.

Respectfully submitted,



Steven G. Durio, Member  
Fifteenth Judicial District

May 8, 2015

APPROVED  
HOUSE OF DELEGATES  
JUNE 11, 2015  
DESTIN, FL

APPROVED  
BOARD OF GOVERNORS  
JUNE 12, 2015  
DESTIN, FL

## **EXHIBIT 1.19**

### **South Carolina Rule 1.19**

- (a) Lawyers should prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law.
- (b) As part of any succession plan, a lawyer may arrange for one or more successor lawyers or law firms to assume responsibility for the interests of the lawyer's clients in the event of death or disability from practicing law. Such designation may set out a fee-sharing arrangement with the successor. Nothing in this rule or the lawyer's designation shall prevent the client from seeking and retaining a different lawyer or law firm than the successor. The lawyer to be designated must consent to the designation.
- (c) A registry shall be maintained by the South Carolina Bar. The successor lawyer(s) shall be identified on the lawyer's annual license fee statement.

### **(Proposed) Louisiana Rule 1.19**

- (a) Lawyers should prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law.
- (b) As part of any succession plan, a lawyer may arrange for one or more successor lawyers or law firms to assume responsibility for the interests of the lawyer's clients in the event of death or disability from practicing law. Such designation may set out a fee-sharing arrangement with the successor. Nothing in this rule or the lawyer's designation shall prevent the client from seeking and retaining a different lawyer or law firm than the successor. The lawyer to be designated must consent to the designation.
- (c) A registry shall be maintained by the Louisiana State Bar Association. Each lawyer shall designate any successor lawyer on the lawyer's annual registration statement.