

"TRANSITIONS" GUIDE FOR NATIONAL ACADEMY OF ARBITRATORS MEMBERS WHO ARE CONSIDERING CLOSING AN ARBITRATION PRACTICE

INTRODUCTION

Many NAA members have decided to retire from arbitration or are contemplating doing so. Other members have been forced to retire because of unanticipated health or other personal problems. Still other members have recently passed away leaving family members or colleagues to do what is necessary to close their arbitration practices. This guide has been prepared to assist members or their families as they go about the task of closing the arbitration practice.

ADVICE APPLICABLE TO EVERYONE

None of us want to contemplate situations in which, through sudden incapacitation or death, we can no longer attend to our own affairs, but all of us know that these are possibilities. For the sake of those who will have to close our arbitration practices for us, we should leave them clear instructions about what needs to be done. We know of situations in which those charged with handling these matters have had to do so with little or no guidance about how to proceed. We urge all members to provide detailed instructions to a family member, a friend or a colleague who has agreed to take on these responsibilities. These instructions should include knowledge of:

- your filing system (e.g. where you put paper files; how you log in cases; where files of pending cases are located)
- your computer files (of cases and their status; email correspondence; invoices; receivables), including relevant passwords
- what cases you have been selected to hear, but are not yet closed.
- Who selected you, including contact information for the parties and appointing agencies
- Which cases are scheduled, where and when, or are to be scheduled
- your outstanding receivables
- your State and Federal taxes; do you have to file quarterlies, W-2s, W-3s, 941s? Other? What have you filed, and what remains to be filed, what are the due dates?
- who does your tax accounting?
- any spreadsheets or ledgers that you keep for recording income and expenses
- where you do your banking? Do you have a separate account for business?
- do you have credit cards? Do you have a separate one for business?

WHAT NEEDS TO BE DONE IMMEDIATELY BY THE PERSON TASKED WITH CLOSING THE MEMBER'S PRACTICE IN CASE OF INCAPACITATION OR DEATH

Note: If you need help with these tasks, please contact the Academy Office (naa@naarb.org; NAA Operations Center 1 N Main St, Ste 412 Cortland, NY 13045 607-756-8363), and you will be put in touch with the Transitions Committee Chair and/or the Academy's Regional Chair and a member will assist you.

- If the member has been appointed to pending cases by agencies but cannot complete the work, contact the agencies to inform them of the situation. (contact information and a sample letter is shown below)

- Ask the agency to notify the parties of the situation. If the member has made such arrangements with an arbitrator colleague(s), advise the agency to let the parties know that another arbitrator has agreed to step in to finish the cases if the parties want him/her to do that.
- Ask the agency to remove the member's name from its panel so that his/her name will no longer be sent to parties.
- If the member has been selected by parties directly, but cannot complete the work, contact them to inform them of the situation and let them know that the member will no longer be available to accept cases from them. If the member has made such arrangements with an arbitrator colleague(s), advise the parties that another arbitrator has agreed to step in to finish the cases, if the parties want him/her to do that.
- If new cases are received from parties, notify them immediately of the situation so that they may select another arbitrator without delay.
- Notify the Academy Office that the member is incapacitated and will no longer be practicing or has passed away.
- If the member has liability insurance through the Academy, notify Complete Equity Markets that the member is incapacitated and will no longer be practicing or has passed away. (Complete Equity Markets address is: 1190 Flex Ct. Lake Zurich, IL 60047 1-800- 323-6234). Inquire about getting tail coverage for an incapacitated member to insure against any lawsuits which may arise from the period that the member was still arbitrating.
- Notify the member's business credit card company that he/she will no longer be using it and cancel the card as soon as final payments have been made.
- Pay any of the member's outstanding bills
- If the member rents an office, notify the landlord of the situation and arrange terms for vacating the office.

NOTE: If you are unsure of what appointments or panels the member is listed on, contact the Federal Mediation and Conciliation Service and the American Arbitration Association and request a copy of the member's biographical statement. It should include a listing of all current panels and rosters. Appointing agencies, such as FMCS, AAA, National Mediation Board and State agencies will normally have a list of the member's current appointments through those agencies. They may also be able to assist in identifying contact information for the permanent panels the member is listed on.

OTHER THINGS THAT NEED TO BE DONE BY THE RETIRING MEMBER

- Notify the Academy Executive Secretary-Treasurer that you have retired.
- If you have liability insurance through the NAA, notify Complete Equity Markets that you will no longer be practicing after [date]. Inquire about tail coverage to insure against lawsuits arising from the period while you were still practicing.
- Notify the appointing agencies of your retirement, tell them that you can/cannot complete pending cases, and ask to be removed from their panels. If you are an umpire or are on contract panels, notify those parties that you can/cannot complete pending cases and that they should remove you from those panels. (If you have an agreement with an arbitrator colleague(s) suggest to the appointing agencies or parties that another arbitrator has agreed to complete the case(s) if the parties want that option).
- Notify your tax accountant(s) and ask what needs to be done.

- If you are renting a business office, inquire about lease ending date; moving date

OTHER THINGS FOR EVERYONE TO THINK ABOUT

- What do you want to do with your books? Your arbitration decisions? Equipment (phones, computers, fax, copier)? File drawers? Furniture?
- Re your books and decisions, you may want to contact libraries, law libraries or universities and inquire about whether they would like to have them. Another option is to contact the National Academy Office and give them a list of books that you are willing to donate. The Office can then contact the members to see who might want them.

Note: Appended to this report is a brief description of other documents which you should consider having in order, and in a place known to your spouse/ partner/ family/ colleague/ attorney. You are advised to consult with your attorney for guidance in the preparation of these documents.

ANOTHER TOPIC - WHAT TO DO ABOUT A MEMBER WHO APPEARS TROUBLED

Unfortunately, from time to time, we observe or learn about colleagues who are showing signs of decline in their work; such things as being late for hearings, being late with decisions, dozing off during hearings, appearing to have difficulty remembering names of people or describing events, acting strangely at a hearing, getting lost traveling to/from hearings. The question is, what to do with such information? There is no right answer, but here are some suggestions which might be helpful.

- If you know the member well, talk to the member directly about what you have observed or heard, and ask what you can do to help. If you talk to the member about something that you've heard about but haven't observed, you might say something like, "I recently was told this about you. I have no idea whether what I was told is true or accurate, but I felt that I should bring it to your attention, because if this had been said about me, I would want to know about it." Then take the conversation wherever it goes. If you don't feel able to talk with the member directly then perhaps
- Have a similar conversation with the member's spouse/partner
- Bring it to the attention of a mutual friend or someone who is a colleague of the member
- Bring it to the attention of the member's Regional Chair and strategize about how to proceed
- Contact the Academy Office and find out how to contact the current Chair of the Transitions Committee

SAMPLE LETTERS

To Agencies and Panels

I am writing to inform you that Arbitrator _____ has become incapacitated (or has passed away) and will no longer be arbitrating. Please remove (his/her) name from your panel. [If applicable: Please note also that if Arbitrator _____ has heard cases but has not completed them, he/she has given me the names of other arbitrators who

have agreed to complete these cases. I can supply you with their names if the parties want them].

To Parties

I am writing to inform you that Arbitrator _____ has become incapacitated (or has passed away) and will no longer be arbitrating. (He/she) will not be able to complete the case(s) that you selected (him/her) to decide. [If applicable: Please note also that if Arbitrator _____ has heard cases but has not completed them, he/she has given me the names of other arbitrators who have agreed to complete these cases. I can supply you with their names if you want them].

To Complete Equity Markets

I am writing to inform you that Arbitrator _____ has become incapacitated (or has passed away) and will no longer be arbitrating or mediating. [If incapacitated] Please contact me to discuss options regarding coverage for tail insurance for Arbitrator _____ so that there will be liability insurance coverage for any lawsuits which may arise from the period when he/she was still arbitrating or mediating.

To credit card companies

I am writing to inform you that Arbitrator _____ has become incapacitated (or has passed away) and as of [date] will no longer be using his/her credit card [card #]. After any remaining balance has been paid, please cancel the credit card.

CONTACT INFORMATION FOR APPOINTING AGENCIES

Federal Mediation and Conciliation Service Arthur Pearlstein, Director of Arbitration
202-606-8103 apearlstein@fmcs.gov

American Arbitration Association Christine Newhall, Senior Vice President 617 695
6015 NewhallC@adr.org

National Mediation Board Elijah Crayton, Paralegal Specialist, Office of Arbitration
Services Arb@nmb.gov

For a Listing of State, Local and Provincial Agencies, go to:
<https://alra.org/member-agencies/>

Other Recommended Documents

- Will – This is the primary document used to transfer assets, other than assets based through beneficiary documents, when you die. This is relatively inexpensive to acquire, but in some cases may result in probate which can be timely and expensive.
- Durable Power of Attorney – This will give someone the authority to make legal and financial decisions should you become incapacitated. You are still living but you may have had a major accident or a major illness, and you are unable to manage your financial affairs. It is important to appoint someone you really trust since this person will be managing your assets.

- Medical Power of Attorney or Healthcare Proxy – This document will enable an adult you designate to make medical decisions on your behalf should you become unable of making them yourself.
- Advanced Healthcare Directive or Living Will – This specifies your wishes for end of life care – whether you want life saving techniques used – life support systems, or other measures taken to extend your life.
- HIPPA Release Form – This will allow individuals named in your Advanced Healthcare Directive or Power of Attorney for asset management to have access to healthcare information to deal with insurance matters.
- Living Trust – When assets are transferred via the trust there is more confidentiality, less cost, more flexibility with distribution preferences, and faster distribution and your wishes are less likely to be probated.
- Beneficiary Documents – Beneficiary designations supersede the will for retirement accounts such as TSP, IRA, Roth IRA, 401(k), life insurance, annuities, as well as life insurance and annuity contracts. A number of financial institutions have forms on other types of accounts and you can designate who you want to receive the funds when you die through “Transfer on Death” or “Payable on Death”. It is important to keep a copy of your beneficiary documents in a safe place. If you don’t have copies of these documents or aren’t sure who you named as a beneficiary, simply ask the financial institution for a new beneficiary form. Then complete to designate both primary beneficiaries and contingent beneficiaries (if primary beneficiary is deceased, or refused the inheritance at the time proceeds are paid).

For our Canadian members, we are advised that Law Societies in Canada have publications relating to recommended steps for ending a sole practice. One such, by the Law Society of Ontario is entitled “Key Contingency Planning Steps for a Lawyer Practising as a Sole Proprietor.” REVISIONS AND UPDATES If anyone has suggested improvements, updates, or edits, please contact Ed Krinsky, Chair of the Transition Project Committee, at edbobkrin@aol.com. As this document is updated, the revised version will be posted on the National Academy of Arbitrators website, on the public side, at NAARB.org.

This document has been prepared by the Transitions Project Committee: Chair: Edward Krinsky Members: Sara Adler, Steven Bierig, Richard Fincher, Phyllis Florman, Gordon Luborsky, James O’Grady, Luella Nelson