

SECURE LEAVE/EXTENDED LEAVE OF ABSENCE POLICY



RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL

ABOUT THE AUTHOR

Prior to entering private practice in 2010, Stacey A. Phipps spent 17 years in North Carolina state government, including several years as an Assistant Attorney General where she litigated personal injury, medical malpractice, and workers' compensation claims. She currently practices primarily in the area of plaintiff's civil litigation, including auto accident and other negligence cases. Stacey also offers law practice consulting services targeting attorneys in transition (retirement, winding down, disability). Stacey earned a Bachelor of Science in Elementary Education at the University of Arkansas in 1990, and a Juris Doctor from the North Carolina Central University School of Law evening program in May 1999. Contact Stacey at s1phipps@hotmail.com or (919) 219-1246.

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DISCLAIMER: *This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.*



INTRODUCTION

A law office is the product of your life's work. Because of this, it can be difficult to think of being away from the office for an extended period of time. However, sometimes situations occur that make it necessary to take an extended leave of absence.

Clients and staff need to understand the situation in advance of your extended leave. Preparing them in advance will prevent questions and frustration during your time away from the office.

How to Use this Guide

This Lawyers Mutual Practice Guide will help you prepare for an extended leave of absence. It is designed as a tool for attorneys whose absences will affect client communication and staffing.

Here are some suggested uses:

- To instruct attorneys on the steps needed before taking a leave of absence.
- To help with client communication.
- To help with staff training.
- To use as a topic at a firm meeting or retreat.

This Guide offers general information that should benefit most practices. It is not intended as legal advice or opinion, nor does it purport to establish a specific standard of care for your practice.

Every law office is different. Your support staff needs are unique. This Guide suggests ways for your office to function better in the event of an extended leave of absence.

For more information – or if you have additional questions – please contact Lawyers Mutual's Client Services Team.

HOW TO PREPARE FOR EXTENDED LEAVE

I met my newborn daughter in April of 2014. Although I knew the approximate timeframe and duration I would be away from my firm for adoption/maternity leave, and I did what I could to plan accordingly, it was very challenging as a solo practitioner to manage everything while I was out of the office for nearly eight weeks.

I mistakenly thought that I could handle some tasks while I was out – surely I could keep up with email – but unreliable wifi coupled with a normal but crying newborn, made even that impossible. All work stopped, and I focused only on my baby girl, which was how I should have planned for it all along.

Like many solos, I do not have any employees – I’m really on my own. I share a receptionist and other office resources with several attorneys in my suite, but I do not have a person who can answer questions or return calls in my absence. No one but me has access to my email, my calendar or my files.

Because I was out for a joyful occasion (versus an illness, death or other crisis), I chose to share the reason for my extended leave with my clients and in my secured leave documents. It was my experience that everyone was very understanding, supportive and patient about my unavailability. I wasn’t afraid to “play the baby card,” but did not use it as an excuse for creating unnecessary delays. For reasons I’ll spare you, the secured leave dates I originally requested were ultimately incorrect and I had to make some adjustments on-the-fly. But because everyone knew what I was up to, no one complained.

Planning ahead was important for many reasons, among them, to keep current clients informed and satisfied, to protect my firm’s reputation for responsiveness, and to avoid potential malpractice claims. Further, the North Carolina Rules of Professional Conduct

imply, in Comment 5 to Rule 1.3 Diligence, that sole practitioners have a special duty to “prevent neglect of client matters.”

If you work with legal staff, it is important to prepare for their needs and protect their interests during your absence as well.

The following tips are offered based on my experience being on extended leave, and my work as a court-appointed trustee closing the practices of attorneys who became disabled or were disbarred. Coming in to close someone else’s firm showed me how many policies and procedures in my own office reside in my head alone, and no one else knows or could find out what they are. I have now documented at least some of my common practices in the event of an emergency that necessitates someone else stepping in to handle my affairs – just as I did prior to my adoption leave.

Practice TIPS

Extended leave is very challenging as a solo practitioner.

WHAT CAN YOU DO?

- **Plan ahead**
- **Keep current clients informed**
 - Keep clients satisfied
 - Protect firm’s reputation for responsiveness
 - Avoid potential malpractice claims



Extended Leave Checklist

1. **File for Secured Leave** (Rule 26, North Carolina General Rules of Practice) as early as practical and provide copies to all courts and counsel you have active cases with, as well as the public defender's office, prepaid legal programs, or any other entity which appoints, refers or assigns cases to you. Check local rules for any additional requirements. Although you may not be able to fully comply with the letter of the rule, in terms of providing 90 days notice, for example, the courts and attorneys I worked with were especially understanding of my adoption situation and no one objected to the "late" notice. See Form p. 9.
2. **Notify clients.** If practical, alert clients in two ways – by phone and in writing by mail or email. This minimizes the chance of a client later saying you did not tell them you would be gone. Give them ample notice so they can contact you prior to your departure, if necessary (Don't email them on your way out the door.) Provide a brief status report on their case – especially if they have a court date coming up. Samples attached, p. 6&7.
3. **Notify professional contacts.** If you are a real estate attorney, let your key realtors, lenders and underwriters know your leave dates. If you have a civil litigation firm, contact the insurance adjusters you have open cases with. Think about who might be looking for you while you are gone.
4. **Notify your malpractice carrier.** Discuss your plan with them to make sure you have your bases covered.
5. **Prepare employees.** Communicate the details of your leave and this checklist with staff. Ensure they are on message with what clients are to be told about your absence. Make sure arrangements are made in advance for them to receive regular paychecks and that payroll tax deposits and benefit payments are made.
6. **Print a Master List** – run a report from your case management system. Take a printed list of client names and contact info with you and leave a copy where someone else can access it. If your leave needs to be extended, it will be easy to let people know quickly.
7. **Create case status summaries** for each open file. This can be done using your case management system or a simple Word document. If an emergency arises, another attorney should be able to pick up a file and determine the status, how to reach the client, etc. Samples are attached, p. 8&9.
8. **Arrange for collection of mail.** Do you have a post office box? Do you receive mail in your office such that it cannot be delivered if your door is locked? Are you in a shared office situation where someone can sign for UPS or certified mail? Do you want them to do so if it may constitute acceptance of service? Do you have a post office or courthouse mailbox that needs to be checked? There are many things to consider.
9. **Use online bill-pay or auto-draft** for items becoming due while you are out, or label payments to be mailed by someone else on the appropriate dates.
10. Decide how to handle **incoming payments.** Is there someone who can open your mail and deposit checks? Does the individual have an endorsement stamp, deposit slips or account information? (It is not recommended that you give anyone your ATM card or PIN.)
11. **Update voicemail and email out-of-office messages.** Make it clear whether you are checking messages, and if so, when clients can anticipate a response. Example: "You have reached attorney Stacey Phipps. I am on vacation from

May 1 through May 15, 2015. I am not checking messages at this time. I will return your call on May 16, 2015.”

12. **Update calendar.** Take a printed version of your calendar with you and leave one where someone else can access it in an emergency. If, for example, your leave needs to be extended for a few days, you will know which matters need to be covered, rescheduled, continued etc.
13. Place a **sign** on your door indicating your status, if appropriate. It needs to be concise and professional-looking. Print it on cardstock and hang it neatly and securely. Example: “Stacey A. Phipps, Attorney at Law, is on maternity leave from April 10, 2014 until June 1, 2014. She will not be checking messages during this time. For emergency assistance, please contact Jane Doe at 555-111-1111. Ms. Doe cannot update you on your case status or answer specific questions about your case.”
14. **“Map” your files.** Make a diagram or a list of how your files are organized in case someone else has to access them. Example: “My open civil files are alphabetical in the 4-drawer lateral cabinets. Open criminal files are by court date in the 2-drawer cabinets. Closed files are in the basement. Files with May court dates are on my desk.”
15. **Backup your data.** Whatever you use – the Cloud, Dropbox, external hard drive – this is a good time to make an updated copy of everything. And don’t store your external drive in the same place as your laptop or desktop.
16. **Plan for emergencies.** Can you be reached, and, if so, how? Under what circumstances do you wish to be notified? Do you have access to email, fax, wifi, or printer? Will you be at an address that can accept Fed Ex or similar items? Who is the gatekeeper who will determine “emergencies?”
17. **Prepare for the unexpected.** What if you miss a flight or your cruise ship is detained in port for norovirus, or you lose your passport, or develop malaria? What if your newborn has some special needs that require you to extend your leave? Whatever the reason for your extended leave, it is important to have a person who can step in and deal with emergencies that may arise.



Practice TIPS

HAVE AN EXTENDED LEAVE CHECKLIST. COVER THINGS LIKE:

1. Filing for secured leave
2. Notify clients
3. Notify professional contacts and your malpractice carrier
4. Prepare employees
5. Print a master list of clients
6. Create case status summaries
7. Arrange for mail collection
8. Keep up with bills and payments
9. System for handling incoming payments
10. Update out-of-office messages (voicemail and email)
11. Update calendar
12. Put a sign on your door indicating your status
13. Map your files
14. Backup your data
15. Plan for emergencies
16. Prepare for the unexpected

SAMPLE CLIENT NOTIFICATION LETTER 1 – CRIMINAL

May 15, 2014

Dear *Ms. Sample*,

I wanted to let you know that I will be out of the office and unavailable during the month of *July*. You will not be able to reach me during this time. I will not be checking email or voicemail.

Your next court date is *August 15*. As you know, you still need to complete your community service hours at your church, and get a letter from your pastor verifying the dates, time, and tasks.

I will touch base with you when I return to the office the week of *August 1*, to discuss the details. I look forward to talking to you then.

Email follow-up:

As I indicated in my letter of *May 15* (attached), I will be out of the office and unavailable during the month of *July*. You will not be able to reach me during this time. I will not be checking email or voicemail. Thank you for your patience.

SAMPLE CLIENT NOTIFICATION LETTER 2 – CIVIL

March 1, 2014

Dear *Ms. Sample*,

I am going to be out on maternity leave from approximately *April 1, 2014* through *June 15, 2014*. You will not be able to reach me during this time. I will not be checking email or voicemail.

As you may recall, we are in the “discovery” phase of your case, and are awaiting responses from the defendants; no mediation or hearing has been scheduled at this time. I anticipate that when I return to the office, we will be ready to schedule the mediation and provide the court with a tentative hearing date.

I will touch base with you when I return to the office the week of *June 15*, to discuss the details. In the meantime, if you have any questions, my assistant Chelsea will be in the office on Mondays and Thursdays only, during my leave.

Email follow-up:

As I indicated in my letter of *May 15* (attached), I will be out of the office and unavailable during the month of *July*. You will not be able to reach me during this time. I will not be checking email or voicemail. Thank you for your patience.

SAMPLE CASE STATUS MEMO – CRIMINAL

Jackson, Charlene A. 919-555-5555, no email, ok to text

State v Jackson

13 CR 12345, 12346

DWI, left of center, speeding

ADA = Jessica Jones 919-792-1111, jessica.jones@nccourts.org

Continued until 7/1/15, last for all. Discovery completed. yClient needs to complete community service hours, assessment (Southlight). Awaiting insurance letter re property damage (requested).

SAMPLE CASE STATUS MEMO – CIVIL

Smith, Jessica A. 919-555-5555, sasmith@gmail.com

Smith v Jones et al
13 CVS 1234 (Wake)
MV/wrongful death

SOL: 12/31/13 (satisfied)

Opposing counsel – Jamie Jones at YM, 919-555-1111, jjones@ymlaw.com

Answered D's discovery, D responses to P pending and due 5/1/15. Awaiting add'l records from WakeMed and hospice (requested). Lien info complete, including Medicare.

Mediation set for 6/1/15 with Mike Johnson at D counsel office.

No trial date set; no motions pending.

CHECKLIST FOR PREPARING FOR EXTENDED LEAVE

- ☐ File for Secured Leave.
- ☐ Notify clients.
- ☐ Notify professional contacts.
- ☐ Notify malpractice carrier.
- ☐ Prepare employee(s).
- ☐ Print a master client/contact list.
- ☐ Prepare case status summaries.
- ☐ Arrange for collection of mail.
- ☐ Arrange for payment of bills.
- ☐ Arrange for processing of payments received.
- ☐ Update voice mail and email messages.
- ☐ Update calendar.
- ☐ Place a sign on your door.
- ☐ Map your files.
- ☐ Backup your data.
- ☐ Plan for emergencies.
- ☐ Prepare for the unexpected.

DESIGNATION OF SECURED LEAVE

NORTH CAROLINA)	IN THE GENERAL COURT OF JUSTICE
)	SUPERIOR COURT DIVISION
IREDELL, NEW HANOVER,)	
ORANGE, PITT AND)	
WAKE COUNTIES)	DESIGNATION OF SECURED LEAVE

TO THE TRIAL COURT ADMINISTRATORS:

NOW COMES the undersigned, pursuant to N.C.G.S. 7A-34 and the General Rules of Practice for the Superior Courts, Rule 26, and shows:

1. This request is made by and for [Name], [Firm Name], [Address], [City], [State & zip code]. XXX-XXX-XXXX phone, XXX-XXX-XXXX fax. NC Bar #XXXXXX. [Email].
2. The secured leave is to begin on [Day of week], [Start date], and conclude on [Day of week], [End date].
3. There are no other periods of secure leave that have been previously designated by the undersigned for the calendar year [Year].
4. The undersigned hereby states that the secured leave period is not being designated for the purpose of delaying, hindering, or interfering with the timely disposition of any matter in any pending action or proceeding.
5. The undersigned hereby states that, to her knowledge, no action in which the undersigned has entered an appearance has been scheduled, peremptorily set, or noticed for trial, hearing, depositions, or other proceedings during the designated period of leave.
6. Although this request is not tendered 90 days in advance of the leave as required by Rule 26, the undersigned respectfully requests that under (I) the Courts honor such request, which is instead submitted more than 50 days in advance. The undersigned represents that a personal matter out-of-state (infant adoption) was not known in time to file this document a full 90 days before the beginning of the secure leave period.

This the [Day] day of [Month], [Year].

COUNSEL

[Name], [Firm Name]
 [Address]
 [City, State Zip Code]
 (XXX) XXX-XXXX phone
 (XXX) XXX-XXXX fax
 [Email] NCBar #XXXXXX