

Winding Down Your Practice

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Believe it or not, many States have rules and procedures for taking over or closing a law practice. Please be aware if you are contemplating retirement or the sale of your law practice to consult with your State Disciplinary Rules to ensure you comply before you lock the door and walk off into the sunset.

I. Retirement

The hardest decision a lawyer must make is when it is time to close the law practice. The overriding decision guiding you throughout your legal career is what is in the best interest of your clients. This same principle should guide you as you wind down the practice of law and close your law practice. Below are some of the important steps and considerations you will need to make as you work your way through the process.

A. Notice

1. Give clients notice and get client consent.
2. Design objectively reasonable procedures aimed at compliance and implementing with client's best interest at its center.

B. File Retention

The ABA Model Rules require lawyers to ensure the client's confidential information is secured; the file (the client's property) and any unearned fees are returned to the client.

1. ABA Model Rules 1.6 (protecting confidential information)
2. ABA Model Rules 1.15 -Property and return "property" of former clients
3. ABA Model Rules 1.9, 1.10 -Not harm former clients' interest in matters on which the lawyer provided legal services.
4. Have a firm wide file retention policy with procedures for regularly culling old files for destruction and train all firm personnel on the policy.

5. Establish a systematic procedure for reviewing and returning client files or property when the matter is closed.
6. The destruction process should be overseen by a lawyer.
7. Keep a record of the file disposition.

C. File Destruction

Have a file destruction provision in your retainer agreement and termination letter.

1. Client consents to destruction on stated timeline.
2. Notify client when file is ready for pickup at conclusion of representation.
3. Fix the amount of time client has to pick up the file.
4. Duty of client to obtain physical possession of file.
5. Consequences of client failure to retrieve file (Subject to destruction)
6. Option to pay for storage-forever?? (Whose rights after the client dies?)

D. Here are some practical guidelines when winding down your law practice:

1. Do not accept any new work! No matter how interesting it sounds.
2. Review all your pending files and make sure you have completed the work to conclude the representation.
3. Pay yourself all earned fees and expenses as you are authorized. Return all unused retainers to the client.
4. Send out final bills!
5. Provide your client with all original documents as well as the opportunity to retrieve their file. Be sure you get a receipt for the file/documents you have turned over to the client.
6. If you have active cases, be sure you have arranged for substitution of counsel together with the client's consent.
7. Have a release or agreement that the client signs acknowledging you have no further liability for acts that occur when your representation ceases and the new counsel takes over.

II. Selling Your Practice

Don't believe the myth that you cannot sell your law practice. Those prohibitions against such a sale have long been abolished. However, just like retirement, the sale of your law practice comes with ethical duties, obligations, and rules to ensure your client's interests are protected.

A. There are several ways in which you can "sell" your practice:

1. Hire younger lawyer into the firm and transfer client matters over time with client consent, then arrange departure compensation for the senior lawyer at the proper time.
2. Join or merge with another law firm. Clients are introduced to the new firm attorneys and arrange compensation according to the value of your work or "book of business" brought to the firm and arrange origination and departure of compensation accordingly.
3. Engage outside co-counsel with client consent and enter into a permissible fee sharing arrangement based on work performed or shared.

B. The ABA Model Rules 1.17: Sale of Law Practice:

1. *Client-Lawyer Relationship*
2. A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:
 - (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;
 - (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
 - (c) The seller gives written notice to each of the seller's clients regarding:
 - (i) the proposed sale;
 - (ii) the client's right to retain other counsel or to take possession of the file; and

- (iii) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.
- C. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- D. The fees charged clients shall not be increased by reason of the sale.
- E. Other ABA Model Rules to Consider:
 - 1. Model Rule 1.1: Competence: -any acquiring lawyer must be able to be competent in the matters to be handled by the selling lawyer. When considering who you are selling your practice to, you will want the acquiring lawyer to evaluate the files before agreeing to acquire the practice. For this to happen, you should obtain a **confidentiality agreement** of information pursuant to **Model Rule 1.6(b)(7)** for the acquiring attorney to evaluate the file before agreeing to acquire the practice
 - 2. Rule 1.02-Scope and Objectives of Representation-the acquiring attorney needs to be clear with the client if they intend to change the scope, objectives, or general methods of representation from those agreed upon with the selling lawyer. The acquiring lawyer should seek to clarify with the client within a reasonable time and enter into a new representation agreement.

III. Succession Planning

There is also the consideration of what should happen if you should become incapacitated, permanently disabled, or suddenly pass away. What will happen to your practice? How will your family manage your law office without you? What steps should you consider making this easier for your loved ones in the event of a catastrophe?

A. Locate a Successor Attorney

Lawyers should consider designating a custodian attorney in advance of any retirement or in the case of a sudden or unexpected illness/death. The State Bar of Texas has an online portal where you can designate your custodian. The toolkit on the State Bar website provides tips, checklists you can use to wind down your practice, including information on preparing your practice for sale and the ethical and transactional factors to consider.

Meet with the successor attorney and discuss the duties and responsibilities the attorney will need to perform.

1. What is the Successor Attorney responsible for?

Determine whether the successor attorney will be representing your interests or your clients. If the successor attorney represents your clients, he may be required to disclose to the client if you have made any errors in their case.

2. What would cause the need for the Successor Attorney to take over?

You will need to establish what event or set of circumstances will trigger when the successor attorney will enter the practice and start winding down your business. It is prudent to determine who will make the determination that the event/circumstances has occurred. This could be your physician, spouse, employee or the successor attorney.

3. Discuss what tasks to be completed/duties to be performed.

Examples:

- Review files for deadlines;
- Obtain extensions in litigation matters;
- Contact clients about returning files;
- Wind up financial affairs;
- Inform the court and others who need to know of the closure
- Collect fees owed; and
- Return unearned fees.

It is important that all of this be incorporated into a written agreement and consider executing a power of attorney specifically tied to this agreement. Financial institutions will most likely require the successor attorney to be an authorized signer on the trust account.

B. Contact and Client Lists

Maintain a current listing of all past and present clients, their addresses, email and phone numbers. Also maintain a list of people or entities that should be notified in the event of your death. Clients will need to be notified of the successor attorney. The client will need to consent to the successor attorney having access to the client's confidential information. You may consider incorporating language into your engagement contract/retainer/fee agreements for addressing this subject.

C. Calendaring System

Have a calendaring system in place and consider keeping a backup calendar system in place as well. This will be one of the first priorities of the successor attorney to determine the applicable deadlines in open cases.

D. Fee Agreements

It is extremely important to have a written fee agreement with every client. Consider incorporating language regarding file retention, language regarding your death or disability and it could also include language regarding the successor attorney.

E. Time and Billing

It is important to keep timely and accurate billing records. Try to record your time every day rather than at the end of the month. You may risk losing an entire month of billing if you should suddenly pass away. Billing should also be done regularly and maintain accurate financial records. This will be of great assistance in the winding down of your practice.

F. Trust Account

Be sure your separate trust account has a detailed ledger for each client for the funds you hold. Without a dedicated ledge for each client, the successor attorney's job will be extremely difficult and stressful!

G. Closure Letter

When your representation of the client is concluded and the case is completed, you should send a "closing letter" or a "termination letter". This letter should inform the client the services have been completed and the matter is closed. You should also return all original documents and materials to the client. This letter will also assist the successor attorney in determining the status of the client's matter.

H. Who knows your Passwords and Account Numbers?

Create a list or invest in some type of password management system that incorporates all the username and passwords for your computers, email accounts, bank accounts and other vital systems your law practices rely upon. Give this list to someone for safekeeping or advise those who need to know where this will be stored in case of an emergency.

I. Have an Estate Plan!

Everyone should have an up to date will and other pertinent documents that handle your assets and wishes upon your death. Don't forget to include in your estate plan your information/instructions regarding your successor attorney.

Resources:

State Bar of Texas Succession Planning Toolkit:

www.texasbar.com/successiontoolkit