Checklist for Closing a Law Practice

1. Notify all current clients

Most lawyers who wish to close a practice will find that they have current open matters. You may, of course, simply decline new work and gradually decrease your workload until the affairs of all current clients have been seen to. If, however, you need to close a practice abruptly because of health, financial or other considerations, you will need to take steps to ensure that current clients are not harmed. Indeed, it is possible in certain situations you may find you cannot completely close a practice until you have concluded representing a particular client – if, for example, you are currently in litigation and cannot gain the court's or the client's permission to withdraw.

There are two ethics rules that are relevant to closing your practice:

RULE 1.16 (d) . . . a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

RULE 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

(a) Reserved.

(b) The practice is sold as an entirety to another lawyer or law firm;

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) the client's right to retain other counsel or to take possession of the file;

and

(4) the fact that the client's consent to the sale 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.

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. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when another lawyer or firm takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4: Professional Independence of a Lawyer and 5.6: Restrictions on Right to Practice.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation. Neither does a return to private practice as a result of an unanticipated change in circumstances result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to

cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office.

[3] Reserved.

[4] Reserved.

Single Purchaser

[5] The Rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by

> *Rule 1.7: Conflict of Interest or another rule to represent the client, the requirement that there be a single purchaser is nevertheless satisfied.*
>
> *Client Confidences, Consent and Notice*
>
> *[6] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6: Confidentiality of Information than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.*

[7] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[8] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[9] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser, unless the client consents. The purchaser may, however, advise the client that the purchaser will not undertake the representation unless the client consents to pay the higher fees the purchaser usually charges. To prevent client financing of the sale, the higher fee the purchaser may charge must not exceed the fees charged by the purchaser for substantially similar services rendered prior to the initiation of the purchase negotiations.

[10] The purchaser may not intentionally fragment the practice which is the subject of the sale by charging significantly different fees in substantially similar matters. Doing so would make it possible for the purchaser to avoid the obligation to take over the entire practice by charging arbitrarily higher fees for less lucrative matters, thereby increasing the likelihood that those clients would not consent to the new representation.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1: Competence); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (see Rule 1.7: Conflict of Interest); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16: Declining or Terminating Representation).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

2. **Notify all clients for whom you handled matters that are now closed and check for client property in closed files**

Many lawyers who have been in practice for a number of years have accumulated material in their files that in point of fact belongs to their clients. You may have original documents (wills, contracts, deeds), material that was once used in evidence (bank statements, letters, insurance papers), and the like. Even if you do not hold material that belongs to them, the file belongs to the client and it's a courtesy to notify your former clients that the office is closing and to ask if they would like their files returned to them. (NOTE: If you are not planning to destroy the file, keep a copy of the file to satisfy the run of any applicable statute

If you cannot reach former clients, you may want to consider taking out a classified advertisement, especially if you have been in a small town or an office established for a number of years.

3. **Review procedure for retention and descruction of old files**

Most attorneys who are leaving the practice of law don't want to have to retain responsibility for hundreds or thousands of old files. If, however, you have a file retention policy for your firm that specifies that the files will be kept for a certain number of years, those files need to be kept in accordance with your policy, even if it means renting storage for them for the next ten years.

Many lawyers have no written policy. What happens to your old files in that case? There is no State Bar rule that specifies that files must be kept for a particular length of time. There is a six-year statute of limitations for filing a grievance against a lawyer, so many lawyers regard six years as an absolute minimum for preservation of material.

4. **Review contents of any safe deposit boxes held by the firm.**

Safe deposit boxes may contain property belonging to a client (i.e., wills), belonging to a third party (objects intended to be used as exhibits in litigation), or belonging to the law firm (stock certificates). Any property not belonging to the lawyer or law firm must be immediately returned. If the parties who own the property cannot be found, the law

firm must hold the property in accordance with the Unclaimed Property Act.

5. Close out your trust account ledgers

It is vitally important that you not close an office while holding client funds. Any monies you have in your trust accounts must be accounted for and either returned to the client, paid out for the purpose intended, or transferred to you as firm income. (Rule 1.16(A)(d)… lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.) Even if you feel certain you do not owe clients money, you should not leave money in a trust account if your firm has closed its doors. For one thing, the I.R.S. may later treat this as "constructive receipt" if the money was rightfully yours, and levy back taxes, fines and penalties against the income. Exception: If you hold money in trust for a client or third party who cannot be located, you may be required to continue holding it until it can be disposed of in accordance with the Unclaimed Property Act. Remember that "client property" can also be found in safe deposit boxes and, on rare occasions, in other bank accounts set up for the benefit of the client. (FAO 98-2)

6. Close your operating account and any other firm accounts

Once your office is closed, make sure it looks closed from all angles. Once all outstanding bills are accounted for and paid, all client advances reimbursed and accounts receivable collected, close your business accounts. Transfer excess revenue into your personal accounts, tax-deferred accounts or capital accounts in a new firm. A final audit by a tax professional is always a good idea.

The issue of accounts receivable can be a thorny one. If your law firm consists of more than one person, you may need to leave open accounts until all "firm money" comes in or is written off, in order to properly distribute the earnings. Resist the temptation to have clients pay you directly in your own personal name if you are collecting firm payments.

If the firm has investment accounts or holds a financial interest in real property, these matters will need to be dealt with as well (probably by a competent tax advisor).

7. Check your malpractice insurance to see if you need tail coverage

Depending on whether your insurance is claims-based or incident-based, you may need extra insurance to cover you for claims made after the office is closed and policy cancelled. Make sure you discuss your situation with your insurance carrier and get a recommendation.

8. Find and review other policies, leases or contracts

The law firm may be closing while a term exists on the office lease, while disability or key man insurance policies are still in effect, or while obligated under the terms of a contract for equipment. Locate all important papers of that nature to determine what the firm's (or estate's) responsibilities are.

9. Notify other interested parties of your new address/firm affiliation

If you are retiring, you may wish to change your State Bar membership from active to inactive if you do not intend to practice law at all. (See Rule 1-201. Membership)

If the lawyer's survivors must close down the practice themselves, they should immediately notify any courts that the lawyer has practiced before of the situation to determine if the lawyer has any matters pending with the court. The clerks should be able to advise what proper procedure should be and the judges will probably be quite helpful in approving delays and even suggesting attorneys who may be able to step in. Also, you may wish to contact the State Bar for additional guidance.