



CLOSING YOUR PRACTICE

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Are you thinking about closing your practice? If so, consider that it takes a good deal of time and a written plan to ensure that all necessary steps are taken, and your clients are protected. This article will cover some of the essential items to consider. Maybe this information is not relevant to your situation right now, but you may want to file it away for future reference. Or maybe you know someone who is planning on closing their practice, and you can share it with them.

NOTIFICATIONS

There are many notifications to be made when the decision is made to close your practice. At the top of the list is notification to your state bar association, and a double-check of the ethical rules which apply to your specific situation.

I specifically mention checking the Rules because they vary from state to state. For example, thanks to the relatively recent passage of Rule 1.17 (Sale of a Practice), followed by an amendment shortly thereafter, the sale of a practice by the estate of a deceased attorney, or by an attorney who becomes totally disabled, or an attorney seeking to close his practice, is now permissible in Pennsylvania.

Sale of a practice has some caveats. For example, there is no “cherry picking” of clients in a sale. All of the clients, unless there is a conflict of interest, must be serviced by the purchasing attorney/law firm. And other restrictions exist as well. For additional information regarding Rule 1.17 or the closing of your practice, you can contact Louise Lamareaux at the Pennsylvania Bar Association Ethics Hot Line (800-932-0311 x2214).

This article, however, is not about the sale of your practice. It is specifically about closing your practice. And the following discussion focuses on issues related to the closing.

Notifications should be made to all clients. You need to give some thought to each client’s unique situation. Perhaps you can protect your client by completing their matter prior to closing your practice. If the case can’t be completed, make

arrangements with the client for another lawyer to take over the case. To protect yourself, you should provide the client with a selection of qualified attorneys from which they may pick new counsel, at *their* discretion.

Be prepared to do some handholding with clients who are upset about the prospect of selecting new counsel. And be sure to provide new counsel and clients with information on where and how they can contact you after your office is closed, so that you can assist if questions arise about your case notes or the file. You may want to consider keeping a post office box for this purpose. Finally, be vigilant about any impending statute of limitation deadlines or any other deadline. If time is short, you may want to bring suit or take other action(s) before turning the file over to someone else, in order to safeguard the client's interests, and insulate yourself from potential malpractice claims.

Speaking of malpractice, you should of course notify your professional liability insurance carrier, and make appropriate arrangements to purchase the extended reporting period endorsement ("the tail") so that you are adequately covered for any law suits which arise after your office closes. You should also arrange for cancellation of other business insurance, and find out how to maintain other policies such as life, medical, and disability insurance, which you may want to continue on a personal basis after your office closes.

Notifications should be made to your employees, and you should assist them in their search for suitable employment. In today's tight labor marketplace, it is likely that letters of reference and maybe a courtesy phone call or two on your part will be all that is required to assist your employees in finding other suitable situations.

Finally, in litigation matters notifications must be made with the appropriate judicial authority, and filed with the court and served on opposing counsel to notify of change of counsel. If the client cannot or will not select other counsel, you may need to consider, as a last resort, (and only when the client has ample time to get other counsel), getting the court's permission to withdraw, and then returning the file to the client. Be sure to check the appropriate Rules of Professional Conduct or PBA's Ethics Hotline for guidance on how to properly terminate representation. You cannot simply abandon your client.

CLIENT FILES

You are already aware that you cannot turn your client's file over to someone else without their written instructions. Before you turn over the file in accordance with those written instructions, you should ensure that anything not of public



record is included in the file, and that the file is in reasonably good order. You should also make copies for yourself of anything in the file you might need to defend yourself in the event a malpractice claim is made.

Notification should be made to former clients advising that you are closing your practice, and inviting them to pick up their closed file. You should have a written plan for destroying your old client files, which at a minimum specifies retention for at least seven years before destruction. And when you destroy a file, don't forget that you must still protect client confidences by shredding or burning the file. You cannot simply stuff it into a hefty bag and put it out at the curb.

In your notification letter to former clients be sure to advise of your file destruction policy, and put them on notice that you will destroy the file without further notice when the deadline date is reached. I suggest that these notifications be sent certified mail, with return receipt.

Notwithstanding the certified notification, you must review all the files before destruction to ensure they do not contain original documents such as Wills, Testaments, Contracts or Deeds. Without the written permission of the client, you may not destroy these originals, even with a file retention policy.

Before turning over closed files to former clients, be sure to note whether the statute has run on potential malpractice claims. If not, be sure to copy anything in the file you might need to defend yourself in case a claim is filed at a later date.

BUSINESS CONSIDERATIONS

Arrange to review and terminate leases for space and equipment, with appropriate steps taken to avoid penalty whenever possible. Notify all your vendors and service providers of the impending close of your office. Cancel any service contracts and arrange for a pro-rata refund when appropriate. Examine all subscriptions and cancel all those no longer needed. Run ads as needed to sell equipment, furniture, books and so forth.

Consult with your tax advisor to make plans to minimize the tax consequences of selling assets and liquidating your practice. Double check to ensure all tax liabilities are paid, and notify all appropriate taxing agencies of the address at which any future notices should be made. Be sure to notify the post office to forward mail.



SUMMARY

This is by no means a totally comprehensive listing of activities to be performed when you are closing your office. This article is designed to alert and assist you in the need for and design of a plan which will help ensure an orderly closing of your practice, protect your client's interests, and insulate yourself from malpractice claims or other unnecessary financial harm. Unless your health is rapidly failing, try not to set a closing date which is too soon. Allow adequate time to pay attention to the many details, and you will be able to close your practice with the same professional excellence you applied to your practice in years past.

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