

## **Closing a Solo Practice: An Exit To-Do List\***

After years of being immersed in the legal profession, being a lawyer arguably defines who you are. Walking away from a law practice usually isn't easy. So much so that when asked about their exit strategies, some lawyers may say, "My exit strategy is to die at my desk!" Be assured, however, there are far more upbeat approaches when it comes to closing a practice.

Perhaps you're among the baby boomer lawyers who are beginning to plan their retirement strategies. Maybe you need to close up shop due to your appointment to a judgeship. Or, perhaps you just want to have a plan in place should the unexpected occur and you have to leave owing to an illness or other personal situation.

Whatever the reason, there are several routes for phasing out a solo practice—and in the ideal, you'll have your route charted out well in advance of actually closing the doors.

Naturally, if getting away for a vacation has proved difficult in the past, the idea of getting away for good may seem really daunting. But take heart—the following offers some orderly steps for solo practitioners to consider to help with the hows and whens of closing their office doors. Note that if you want to sell your practice to another lawyer versus closing it outright, you'll have an additional set of issues to consider, but see the sidebar "[Looking for the Offer You Can't Refuse?](#)" in this issue for some pointers. In all instances, of course, the interests of your clients must come first.

### **Making the Decision to Go Public: Put First Things First**

For many lawyers, the first question may be: When should I go public with my plans? Well, before you leap to tell the world your intentions, stop and think about all the other steps that will need to be taken ahead of that one.

First, inform your trusted staff. You will need their assistance both in building your plan and in implementing it. But beyond that, staff members deserve to know your intentions—after, that is, you have answers to the obvious questions, such as when you will begin winding down the practice. Assure them that they are trusted and valuable with job security until a date certain. Ascertain if any have plans for retiring in the near future. Think of other lawyers who may wish to hire your staff, and prepare to contact local bar colleagues who work in your area to make potential hiring contacts when the time comes.

Of course, long-term clients deserve to hear about your plans in person or at least by telephone. However, think carefully about how and when you describe your plans to clients. Be sure to know the status of all of your matters so you'll be able to answer clients' questions, especially concerning how your plans

Our advice is to be sure that client amounts owed are in the low four figures before informing clients that you plan to close your office. Like it or not, clients may not be as motivated to pull out the checkbook to pay your outstanding bills once they know of your plans to retire.

## **Building Out a Timeline: Assessing the Status of Client Files**

Now, let's delve into the "when" factor of phasing out the practice. As the first step, you'll need to compile a detailed list of all your open client matters. For each open file, your answers to two key questions will help to clarify next steps:

- What is the current status of this file?
- What type of fee agreement is involved?

Estimate a timeline for finishing the work on each of these open files. The aggregation of these timelines will help to inform the overall timeline you'll want to adopt for closing your practice. You may find that you cannot possibly keep your practice open long enough to complete all of your cases, but you definitely want to finalize as many active files as possible.

Next, decide how to deal with the cases that require special handling, including when and how the files might be transferred to other lawyers in accordance with your jurisdiction's rules. If you have pro bono, reduced fee or special fee arrangement cases that you won't be able to finish, do you know of another qualified attorney who would be willing to do so under the same fee arrangement?

Then, assess whether you may need to refund money to any of your clients. In particular, if you charged a flat fee that was designated "earned upon receipt" and you will be unable to finish work on the matter, be sure to check with your bar's ethics counsel for how to proceed. You may need to refund the fee or pay another competent lawyer to finish the work. ABA Model Rule of Professional Conduct 1.5, Comment 4, states: "A lawyer may require advance payment of a fee, but is obliged to return any unearned portion."

To keep your timeline moving, deal promptly with cases before administrative bodies and courts. For cases with pending court dates, hearings or depositions, discuss with the clients how to proceed. You may need to request extensions, continuances and resets of hearings. Be sure to send written confirmations of these changes to your client and to opposing counsel. In addition, be sure to obtain the client's permission before submitting a motion and an order to withdraw as attorney of record or arrange that the new lawyer file a substitution of counsel with the court. You'll need to consult your local jurisdiction's rules and comply well within the deadlines *before* you become officially inactive.

In addition, as you chart out your timeline for closing the practice, remember to keep this point top of mind: Your clients will need adequate time to select a new lawyer. Also, remember the client gets to select the lawyer—you may only recommend. Stress that time is of the essence so that clients don't procrastinate. If possible, provide them with the names and phone numbers of competent lawyers along with the phone number to your bar's lawyer referral program. Again, if any of your clients have cases that another lawyer may not want to take, which could include pro bono or reduced fee matters, you will want to make adequate provisions to get those cases handled, too. Your bar's lawyer referral and pro bono programs may be able to provide information on attorneys willing to assist on those matters.

## **Remember Your Fiduciary Duty: Wrapping Up Client Trust Accounts**

As another critical part of closing up a law practice, you need to address all funds held in a client trust account. The first step in doing this is to get your trust account fully reconciled. The funds in the trust account should either correspond to clients for whom work is being completed or be earmarked for refund to the client. Although if you've held a nominal amount of your own money in the account to

meet the bank's minimum-balance requirements or cover bank charges for services such as check printing, don't forget about that sum when reconciling the account.

Once the trust account is fully reconciled, you'll prepare and send the final client bills. In accordance with your fee agreement, disburse money owed to you for earned fees and reimbursement for costs advanced. Deposit this money to your general business account. Disburse funds belonging to your client to your client. Or, if the clients are going to new lawyers and their trust account funds are to be transferred to the new firm, then make the check payable to both the client and the new firm.

Next, if you have any unclaimed funds in your trust account, you'll need to determine the source. Payments made on behalf of your clients, such as witness checks not cashed, revert to the clients and should be reimbursed to them. Unclaimed funds belonging to clients may be subject to your state's Disposition of Unclaimed Property Act.

Typically, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds or corresponded about them within two years after the funds are payable. You may be required to report the funds to your state's Division of State Lands (or similarly titled division) and to turn the funds, along with a copy of the report, over to your state's IOLTA program. Check with your state bar's practice management advisor or ethics counsel for further guidance. Also, if you know the whereabouts of the recipient of an outstanding uncashed check, consider stopping payment on the check and using the funds to purchase a bank cashier's check and delivering or mailing the check to the recipient.

Lastly, you'll need to notify your bar association when you have closed your trust account—and you must also provide for preserving your trust account records in accordance with your jurisdiction's ethics rules. According to ABA Model Rule 1.15 (a), "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation."

(See "[Managing Your Client Trust Account: Where the Buck Stops](#)" in the January/February 2011 *Law Practice* for more on trust account reconciliations and recordkeeping needs.)

### **Further Considerations: Nuts-and-Bolts Issues**

There are, of course, some other things to consider when developing a plan to close a solo practice, such as the terms of your office lease and any vendor contracts that are currently in place. You'll want to make timely notifications and be aware of any office or equipment agreements that automatically renew without notice and when they renew or end. With that in mind, here's a look at the types of nuts-and-bolts items that must be addressed in your wrap-up timeline.

- **Your office lease.** Hopefully, you were able to negotiate a year-to-year lease at your last renewal period. But what if your lease is going to last longer than your practice? You may need to negotiate an early termination of your lease or arrange for a sublease of your office, if allowed.
- **Equipment leases and disposal.** If your office equipment is still under lease, contact the vendor to see if you can renegotiate or arrange for a sublease. If you own certain equipment outright, you may want to sell it or donate it to a nonprofit group. *Caveat:* You will first need to take the proper steps to "wipe" any client information that is stored on computers, digital copiers and other electronic devices (e.g., smartphones)! Consult your IT consultant or your state bar's practice management advisor for help with this.

- **Utilities and office services.** You'll need to bring your utilities and office services to a close in a timely fashion to receive a final bill to pay soon after closing. Don't overlook your Internet and e-mail service, or your Web site, either. Consider setting up an automated reply on your e-mail and a static page on your site with information about the closure of your office and where closed files are being stored.
- **File storage.** Your state bar may have specific guidelines for properly storing closed client files. If you carry professional liability or malpractice insurance, you should check with your carrier, too. Also check your state statutes and regulations for any statute of ultimate repose on a legal malpractice claim. You will want to have your files in the event you need to defend yourself against a claim.
- **Tail insurance coverage.** Check with your professional liability or malpractice insurance carrier (again, if you have one) about obtaining tail insurance coverage, which covers you for any malpractice claims that arise after you have stopped practicing for malpractice incurred while you were still practicing. Tail insurance coverage might be included free as part of your insurance coverage or you may need to purchase a separate policy for a set term. Here, too, consult any statute of ultimate repose for a legal malpractice claim.
- **Business records.** The IRS will expect you to keep your business records for as long as they may be needed to prove the income or deductions on your tax return. You may need to recall records and receipts related to an asset you sold or disposed of for three years after you sold or disposed of the asset. Some of your business records, however, will need to be kept for a minimum of seven years. Ask a CPA for advice on which of these records to retain and for how long.
- **Call-forwarding number.** In the final days of winding down your practice, you should arrange to have your office phone number forwarded to your home, or to a lawyer who is assisting you with the closure of your office, to ensure that any clients calling will be given the proper assistance. To convey relevant information, you might also arrange for an automated message on your office line for at least several months after your practice closes.

The foregoing list of considerations and to-dos is, admittedly, not comprehensive but it gives you a good primer if you're a solo thinking of closing up shop as your exit strategy. The "[Checklist for Closing Your Solo Practice](#)" in this issue includes some additional items you'll want to add to your planning, too.

Overall, with the right amount of advance planning—planning that ensures the interests of your clients come first—you'll then have just one more to-do, which is: Enjoy the next steps in your life's path!

## Looking for the Offer You Can't Refuse? Negotiating the Sale of a Practice

Selling your practice is an option if you have the time to find a buyer and the time for negotiating the transaction. Consider hiring representation, such as a business transactions lawyer or CPA, to participate in the negotiations. But see ABA Model Rule 1.17: Sale of Law Practice and the corresponding rule for your state first. While the valuation and negotiation processes can be complex, the three paramount issues are (1) price, (2) payout and (3) workout.

Ultimately, the price is whatever you can negotiate. However, a practice with a stable and loyal client base is easier to value than a single transaction client base. Values may be derived from the present value of future estimated gross fees; a calculation of actual gross fees for the first, second or third

year after the transaction closes; or a combination of such calculations with an estimate of the value of “goodwill.” Goodwill can include factors like the reputation of the office, location, skills of employees, brand name, referral network, bargain lease, office systems and the like. Another component of the price can be expenses that you would incur but for the sale of the practice. Two examples are tail insurance coverage premiums and medical premiums that your firm will no longer be paying on your behalf. In general, it is advisable to use numbers that are measurable rather than pure estimates.

The payout is when you receive the proceeds of the sale. Likely, you will expect a portion of the price up front. The rest of the payout may depend on how the price is calculated if dependent on future gross fees.

The workout is your role after the sale of the practice. Part of the goodwill component of the price may depend on you remaining around the firm for a period of time in some capacity.

A number of state bar associations offer resources related to the sale of a law practice. Also, the book *Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer, 5th Edition*, has two chapters dedicated to the topic.

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