CLOSING A LAW PRACTICE—Do You Know What to Do?

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There could be a number of reasons an attorney might need to close his or her law practice. Death, retirement, and new employment are some of the most common reasons. When that moment happens, will you be prepared? Would your family members know what to do or where to turn for help? Some of the realities of closing a practice include necessary communications to and from clients, records and files that need to be reviewed, final tax returns that need to be prepared, notification to the courts and others of the practice closure, office staff that need to be retained or let go, and so on.

Probably the most complicating event is when an attorney dies without a succession plan or an assuming attorney in place to assist. Both the American Bar Association and the State Bar of California provide comprehensive guidelines and a practitioner’s checklist for what should be considered and how to handle what needs to be done. Use of the guidelines and checklist can maximize the value of a law practice following the death or disability of a practitioner or preserve the value of a practice in the event of a sale. The State Bar’s guidelines and checklist are written with the goal of avoiding the takeover of the practice by the State Bar of California, pursuant to Business and Professions Code Section 6180, et seq. In plain English, the introduction of the Practitioner’s Checklist states, “when the State Bar comes in, the State Bar’s primary concern is the protection of client confidentiality and the return of files to the client; not the continuance...
of the practice or the sale for the benefit of the deceased or disabled practitioner’s heirs.”

The Practitioner Checklist, published by the State Bar of California’s Trusts and Estates Section, and the State Bar of California’s Guidelines for Closing or Selling a Law Practice\(^1\) are documents that can and should be consulted before an attorney suddenly dies or suffers an incapacitating illness. Reviewing them now can serve as a guide for how best to develop a plan of succession for your law practice, from directing the resolution of bank accounts, insurance, and client billing to understanding the computer database systems and bookkeeping records of the law practice.

In addition, BASF’s Lawyer Referral and Information Service (LRIS)\(^2\) is an excellent resource for referrals to attorneys who handle closure of law practice matters and the development of law practice succession plans—which every attorney, especially the solo practitioner, should have.

LRIS panel attorney Peter Myers of Myers Law Firm explains, “The tasks which have to be done when closing a law practice are about the same as those which have to be done in closing any business. However, with a law practice there are ethical conditions that are imposed to protect the confidentiality of client information and to guard against the solicitation of clients by other lawyers.” Myers further explains that while it may seem like a simple matter, “If the closing of the law practice is not handled correctly, fee disputes or litigation between the heirs of the deceased partner and the surviving professionals who are running the decedent’s business could occur.”

Here are some essential considerations to be aware of in the event that an attorney has died or suffered an incapacitating disability or illness, taken from the Guidelines for Closing or Selling a Law Practice:

- Ask local court clerks to run a computer search to determine whether the attorney is attorney of record on any open matters.
- Determine whether the attorney had an arrangement with another attorney (sometimes called an assuming attorney or assumption attorney) who previously agreed to assume the practice of the deceased or disabled attorney.
- Ask the surviving spouse or office staff if the attorney had a close friend attorney who might have agreed to be an assuming attorney.
- Calendars: Look for desk calendars, computer calendars, and secretarial calendars to seek information on cases in process and due dates.
- Client lists: There may be lists of clients divided into active files and closed files. These people will have to be notified. If there is nothing else available, a Christmas card list or seasons greetings card list may provide names and addresses of both clients and nonclients for notification.
- Closed files: Closed files may be kept in more than one location. Closed files may be stored in public warehouses, the attorney’s garage or basement, or in the attorney’s home or even with a client. All staff and family members should be quizzed to determine whether they know of out-of-office locations.

Closed files must be examined before destruction or return to clients. The examination of closed files (and open files) raises questions of attorney-client confidence and possible violation of confidence. In some states only an attorney or someone working under the direct supervision and control of an

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attorney can look into the files. In other states a nonattorney spouse or relative or personal representative of the attorney’s estate may be able to examine the files.

- Delivering files to clients: Delivering an active file to a client or attorney may be necessary to protect the client’s interests. Some consideration must be given to photocopying what is given for malpractice protection. Active files delivered directly to clients must be carefully examined before delivery. Misfiled paper relative to other clients must be recovered. A receipt for the file must be obtained.

- Notices to courts, administrative bodies, and other public agencies: Immediately upon making arrangements for a successor lawyer or firm, notify all courts, agencies, opposing counsel, and so on, of the change in representation by appropriate substitution or other documents. Some courts or agencies might require a motion to make the change.

In the event an attorney dies or becomes incapacitated without a succession plan in place, California Probate Code Section 2468 provides for the conservator of the estate or other interested person to seek the appointment of an attorney to take control of the files and assets of the practice. In the event that the immediate appointment of a “practice administrator” is required to safeguard the interests of the estate, the court can make such an appointment and waive notice requirements regarding the hearing of the petition. The petition should set forth the value of the assets of the practice and specify the powers of the practice administrator.

In either the case of an incapacitated attorney or the case of a deceased attorney, the best recommendation is to plan ahead so that succession of the law practice or its closing can be handled with the least amount of chaos.

Carole Conn is the director of public service programs for the Lawyer Referral and Information Service of The Bar Association of San Francisco.

2. Contact LRIS at www.sfbar.org/lris.

If you would like to develop a plan for closing your practice or know someone who has just lost an attorney relative and does not know where to turn for help, contact the Lawyer Referral and Information Service of The Bar Association of San Francisco at 415-989-1616 or at www.sfbar.org/lawyerreferral.