

Louisiana State Bar Association
Rules of Professional Conduct Committee

PUBLIC Opinion 05-RPCC-001¹

April 4, 2005

Lawyer Retirement - Ethical Requirements to Client

A lawyer leaving the practice and closing his office should notify his clients of his departure from the practice, make arrangements for the surrender of clients' files and return all monies or properties in safekeeping.

A lawyer closing his practice is required to exercise reasonable diligence in providing proper advance notification to his clients of his decision to terminate his practice.² He must give adequate time to the client to employ other counsel, must surrender the clients' files and return any advance fee or property of the client held in safekeeping.³

¹The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

²This opinion does not address closure of a practice because of death or incompetence of the attorney. For excellent discussions of that subject, see ABA Formal Opinion 92-369, 1992, and also, *ABA Journal*, November 2003, p. 40. Also, see Rule 1.3, of the Louisiana Rules of Professional Conduct (2004): “A lawyer shall act with reasonable diligence and promptness in representing a client.”

³Rule 1.16(d) of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, “... (d) Upon termination of representation, 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

A. Guidelines

Some guidelines are helpful in handling different client cases and files:

If the case is in active litigation, we recommend that, in order to protect the client's interests, the client should be given reasonable notice of the impending retirement. In addition to written notice the lawyer should consider personal and telephonic communication. The client should be advised of any pending court dates and directed to obtain other counsel as soon as possible; and, if possible, the lawyer should assist the client in finding new counsel. The retiring lawyer should also surrender all papers and property to which the client is entitled—especially the client's file—to the client's new attorney or to the client. The lawyer should seek to obtain a signed receipt from each client and/or his new counsel for the relinquished file and/or property. If the retiring lawyer is enrolled as counsel of record in any litigation, he should file a motion to withdraw and substitute counsel with each court in which the clients' files/cases are pending and comply with all applicable court rules.

Files in which the lawyer is still enrolled but which have had no recent litigation or in which suits have been settled require that the lawyer file a motion to withdraw in each such matter and/or a motion to dismiss. Procedures detailed above pertaining to client notification and return of client papers, property and file(s) would also be appropriate here.

Each active or open client file not tendered at the client's request to other counsel should be individually analyzed and the client should be advised in writing regarding any steps which he

papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.”

should take to protect his interests.

Retention or destruction of closed files should be determined in accordance with the rules and a file retention policy developed by the attorney based on the nature of the file and good judgment.

Transactional cases should be handled in much the same manner as described above. However, if the lawyer has been appointed as agent for service of process for any corporation or company, he should also notify the client of the need for it to appoint a new agent.

Should a client's whereabouts be unknown, it is our opinion that the lawyer should send out a form letter to each such client using the client's last known address in an attempt to notify the client of the lawyer's change in status/withdrawal/termination of representation and the opportunity for the client, if desired, to obtain his files and/or property from the lawyer or the lawyer's representative.

B. Records Retention

Rule 1.15 of the Louisiana Rules of Professional Conduct (2004) requires the lawyer to keep and maintain complete records of all client trust account funds and other client property for a period of five (5) years after termination of the representation.⁴ This record-keeping requirement would apply to ALL client matters, including all those addressed above.

While we cannot state a specific period of time in which a lawyer must keep a client's files—particularly for clients the lawyer is unable to locate—we believe that the lawyer has an obligation to continue to safeguard client property/funds which she may be holding for such

⁴Louisiana Rules of Professional Conduct (2004), Rule 1.15. See also Section 28(A) (2) of Rule XIX, Part B of the Rules of the Supreme Court of Louisiana.

clients.⁵ The lawyer should also be aware that there is still no prescriptive period on most disciplinary complaints.⁶ Accordingly, properly disposing of some legal files may not be entirely prudent after termination of representation, as it would be difficult for the lawyer to defend complaints when the file is unavailable. Unfortunately, the lawyer will have to determine on a “case-by-case” basis how to address this issue and should develop a policy⁷ for uniformly handling closed files.⁸

A lawyer who is a member of a firm is at less of a disadvantage in terminating his practice than one who is a solo practitioner, as he probably has the comfort of the assistance of other firm members who can attend to the orderly disposition of files, while the solo practitioner is not afforded that luxury. Both should either give or cause to be given timely written notice to clients to permit them to seek other counsel. Any solo practitioner should also consider executing an agreement with another attorney to take over the orderly handling and disposition of his clients’ files.⁹ Care should be taken that the confidentiality of clients’ files be maintained.¹⁰

⁵ A published advisory opinion on that topic will be forthcoming in the future.

⁶ Although, see Section 31 of Rule XIX, Part B, of the Rules of the Supreme Court of Louisiana, amended effective May 30, 2003, which provides for ten (10) year liberative prescription where the mental element of the disciplinary complaint is merely negligence.

⁷ A good document retention policy would include advising clients in the lawyer’s initial engagement letter when the client’s records might later be destroyed (e.g., “X” number of years following termination of the representation).

⁸ Original wills and original stock certificates or units in a corporation or company, for example, should be safeguarded for the client even if the client could not be found.

⁹ *Id.*, footnote 2, *ABA Journal*, p. 40.

¹⁰ See Rule 1.6, Louisiana Rules of Professional Conduct (2004).

C. Keeping Your License

If a lawyer believes she might return to practice at some later date, she should familiarize herself with the Mandatory Continuing Legal Education (MCLE) rules and dues requirements before leaving the practice.¹¹ Retiring lawyers often desire to retain their licenses even in retirement. Unless otherwise exempt because of age, they will be required to comply with the MCLE requirements.¹² The retired lawyer would also be required to file his annual registration statement (included as part of the annual Louisiana State Bar Association dues/Louisiana Attorney Disciplinary Board assessment billing).¹³ Should the lawyer desire to surrender his license and stop practicing but still be affiliated with the Louisiana State Bar Association in an “inactive” status, he could reduce his dues, disciplinary assessment and MCLE obligations during the period of formal inactivity.¹⁴

¹¹MCLE Rules (Rule 2 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana), and dues requirements (Article I of the By-Laws of the Louisiana State Bar Association).

¹²Lawyers sixty-five (65) years of age and older are exempt from MCLE by Rule 2 of Rule XXX, Part H, of the Rules of the Supreme Court of Louisiana. Currently, the requirement of MCLE for non-exempt lawyers is 12.5 hours per year, including 1 hour of Ethics and 1 hour of Professionalism (see Rule 3 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana).

¹³See Section 8 of Rule XIX, Part B of the Rules of the Supreme Court of Louisiana.

¹⁴Section 3 of Article IV of the Louisiana State Bar Association Articles of Incorporation provides that “...Any member in good standing may be enrolled as an inactive member upon his written request to the Secretary, who shall then notify the Supreme Court accordingly.” Section 3 of Article I of the By-Laws of the Louisiana State Bar Association provides, in part, that “...Inactive members shall not be required to pay dues...” See also Section 5 of Article I of those By-Laws regarding reinstatement. Section 1 and Section 7 of Rule 2 of Rule XXX, Part H of the Rules of the Supreme Court of Louisiana exempts members not engaged in the practice of law in the State of Louisiana from MCLE requirements. Section 8(G) of Rule XIX, Part B of the Rules of the Supreme Court of Louisiana provides for exemption for retired and inactive members from payment of the annual disciplinary assessment to the LADB. As an added “reward,” Section 2 of Article I of the By-Laws of the Louisiana State Bar

D. Summary

In summary, a lawyer closing his practice should with reasonable diligence notify his clients of his retirement so that they might have adequate time to employ other counsel. He must surrender the client's files to the client or other counsel and must return any advance, unearned fees and client property held in safekeeping. The lawyer should analyze each file he has not been asked to tender to the client or another attorney and should advise the client as to protection of the client's interests. Disposition of closed files should be handled in accordance with a file retention policy developed by the attorney or law firm.

Association provides for active membership status with full dues exemption for 50-year or longer members; those members are also exempt from MCLE requirements and disciplinary assessment. Kindly check with the Membership and MCLE Departments of the Louisiana State Bar Association and the staff of the LADB for further details on the current rules at the time of retirement.