

Chapter 11

Closing Your Practice

Closing Your Practice - Things to Consider

Voluntarily Closing Your Practice Checklist

Involuntarily Closing Your Practice Checklist

LSBA Public Opinion 05-RPCC-001, Lawyer Retirement- Ethical Requirements to Client

LSBA Public Opinion 06-RPCC-008, Client File Retention

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A smooth law firm transition – whether it is due to voluntary considerations like retirement or a new job or involuntary issues such as illness, death or disbarment – is a lawyer’s responsibility.

Whether it is due to a new position, illness, or future retirement, lawyers should have plans in place to facilitate closing or transitioning his or her practice. A lawyer’s clients and family are owed that diligence and fiduciary responsibility.

What happens with no planning? You could have potential violations of the Louisiana Rules of Professional Conduct with risk to both clients and family. Consider distraught family members handling legal issues regarding client files and funds.

It Is Inevitable

When a lawyer stops practicing law varies. If you get a call regarding a lawyer-friend’s death, what should you do? Consider Rule XIX Section 27.

SECTION 27 APPOINTMENT OF COUNSEL TO PROTECT CLIENTS’ INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES

A. Inventory of Lawyer Files.

If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent’s affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory.

Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

Plan Ahead

Do not rely on luck or the grace of others. Have proper planning in place for transition. Office practices to consider in anticipation of eventually closing or transitioning a lawyer's practice include:

- a) Selecting a "transitional lawyer" with emergency access to passwords and calendar and accounts.
 - Transitional lawyer issues:
 - Are there any conflicts?
 - Who do you represent?
 - Is this a voluntary or compensated position?

- b) Having financial clarity including regular reconciliation of a lawyer's trust account.
 - Financial clarity:
 - Why needed?
 - What kind of fee is it?
 - Is a refund owed?
 - To whom do funds in the operating and trust accounts belong?

- c) Having a method of distinguishing active files and important deadlines.
 - Active files and deadlines:
 - Failure to have a plan in place puts clients, the firm and/or your estate at risk.

- d) Having a file retention/destruction policy.
 - What happens to the files?
 - Whose responsibilities are the files? Storage? Review? Transfer? Destruction?

Recognizing that there could be numerous reasons for closing a firm, from death to disbarment, please consider the following general checklists.

Voluntarily Closing Your Practice Checklist

- Notification of plans to staff and clients
- Checking and resolving any conflicts due to transition
- Finishing work on active files and/or facilitating the transition of matter to new counsel
- Withdrawing from litigation files and/or ensuring substitute counsel, considering Rule 1.16 of the Louisiana Rules of Professional Conduct
- Providing copies of active files to clients, and for the destruction/return of old files in compliance with Rules 1.6 and 1.15 of the Louisiana Rules of Professional Conduct
- Taking steps for proper file storage for matters where the lawyer is required to retain a client's file or financial information
- Reconciliation of trust account
- If closed, notification to ODC of change in trust account status, although a lawyer may want to retain the trust account in anticipation of limited continued use (to receive a refund from the clerk of court, for example)
- Returning unearned or unused client funds
- Taking steps to forward calls and/or mail to new number/address
- Notifying LSBA and insurers of change in status and/or any address changes
- Considering the benefit of tail coverage (Note: your bar-sponsored insurance coverage may provide free tail coverage if you completely resign from the practice of law and have been continuously covered for at least three consecutive years.)

Involuntarily Closing Your Practice Checklist

List compiled from Susan Berson's article, *The Death of a Practice*.

- Binder, guidebook or packet with materials for staff, family and transition lawyer
- Selection and designation of transition lawyer
- Authorization for emergency access to accounts (check with bank)
- In case of incapacity, a power of attorney for transition lawyer
- List of passwords and contacts
- Explanation and access to calendaring system
- Instructions for family regarding estate and responsibilities of transition lawyer
- Draft of letters to be sent to clients, etc.

A lawyer may wish to consider including the following sample language in an engagement letter and/or contract.

Explanation of and notification of “Emergency Transition Lawyer”

In the event that, due to an emergency situation, your lawyer [name] becomes incapacitated or dies, you, the client, authorize [transition lawyer] to step in and take whatever reasonable steps are necessary on a limited and temporary basis to protect the client’s interests until client can hire new counsel.

Explanation of “File Retention Policy”

Please be aware that our file retention policy is [whatever the lawyer’s policy is] and we destroy client files [] years after the client’s case is completed. If you do not want us to destroy your file at that time, please make arrangements to come in and pick up your file.

Sample language to include in “Voluntary Closing Your Office Letter”

As of [date], I will be closing my law practice due to [reason]. I will be unable to continue to represent you. I recommend that you hire another lawyer to complete this matter immediately so as not to prejudice your case. The following are a list of lawyers whom you may wish to consider contacting, but please note that you can hire any lawyer you choose. Please contact me to schedule a time to get your file, or notify me in writing where to send same. If you or your new lawyer would like to communicate with me, please contact me at the following address or telephone number.

Sample Language to Include in “Involuntary Closing Your Office Letter”

Unfortunately, [lawyer’s] law practice is closing due to [reason]. I have been designated the transition lawyer to assist you with obtaining a copy of your file and finding new counsel. I recommend that you hire another lawyer to complete this matter immediately so as not to prejudice your case. The following are a list of lawyers whom you may wish to consider contacting, but please note that you can hire any lawyer you choose. Please contact me to schedule a time to get your file, or notify me in writing where to send same. If you or your new lawyer would like to communicate with me, please contact me at the following address or telephone number.

Additional Resources

- LSBA Public Opinion 05-RPCC-001, *Lawyer Retirement- Ethical Requirements to Client*
- LSBA Public Opinion 06-RPCC-008, *Client File Retention*