



ALPS

Practice Management Pointers

Guidelines to Closing Your Law Practice

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A lawyer can decide to close her practice for any number of reasons. Disability, retirement, disbarment, a move out-of-state, or a career change are the more common ones we hear. While the specific steps that need to be taken can vary significantly depending upon the reasons behind the closure, this article seeks to provide some general guidance on the principal issues that will arise. At the outset, understand that in many instances the process of properly closing a law practice can easily take six to twelve months and sometimes longer because the obligations to protect client confidences as well as the interests of the client make closing a law practice more difficult than closing other types of businesses. Finally, note that jurisdictional rules do differ and a review of your local rules and ethics opinions, perhaps coupled with a call to your local bar counsel would be well advised early on in the process.

The first step one should take after making the decision to close is to determine what files can be finalized prior to closing and then seeing that enough time is set aside to enable you to follow through. This does mean that you will need to make a decision as to when to stop taking on new matters and also when to notify staff as they will be interacting with the public as well as current and past clients once the news breaks.

The second step is to write and send a letter to all clients with active matters that cannot be closed in order to advise them of the upcoming change. Typically these letters will inform the client of any relevant time limitations or time frames, provide instructions as to how and where they may obtain a copy of their file, and advise them to find a new attorney as quickly as possible. An offer to assist the clients in finding a new attorney by providing a few names or the phone number to a local lawyer referral service would also be appropriate. Don't overlook the importance of setting forth your file retention policy and providing post closure contact information in the event a client needs a copy of their file at some later point in time. It is for this reason that some jurisdictions also require that a similar letter be sent to past clients.

Where called for, these initial letters are usually followed up with a full accounting of client funds that remain in the trust account and/or a statement of fees owed by the client.

As clients respond to these letters, remember to retain your original file and return to the client any original documents and/or client property such as original wills, deeds, stock certificates, signed contracts, promissory notes, etc. Again, clients get copies of your file; you get copies of their original documents. Don't forget to document the disposition of the files in case questions come up post closure. Have clients sign an authorization to release their file to their new attorney or sign an acknowledgement that they picked up a copy of their file.

On matters that have pending court dates, depositions, or hearings, have a conversation with the client in order to discuss how to proceed. A request to reset a hearing or a request for an extension or continuance may be called for and, once received, confirmation of the granted request should be sent to opposing counsel and your client. For cases before a court or administrative body, obtain client permission to submit a motion and order to withdraw as the attorney of record and at an appropriate time verify that all motions to withdraw have been granted. If the client has obtained a new attorney, make certain that a Substitution of Counsel is filed.

If, over the course of your career, you failed to review and destroy old files that no longer needed to be retained, now is the time to begin. The costs to continue to maintain closed files can be significant and you have an ethical obligation to take care of this. Don't burden a spouse by leaving this for them to deal with should your spouse outlive you.

When you originally closed the file, you should have separated all the original documents that belong to the client and returned them to the client. If you did not, do it now. In fact, a review of every file prior to destruction is a good idea as sometimes original documents were overlooked when the file was initially closed.

Remember that in most jurisdictions the file belongs to the client and some clients will want their original file as opposed to having it destroyed. This means that you can't simply decide to destroy client files absent client awareness and approval. If you did not obtain the client's instructions when you closed any given file, seek those instructions now. Many attorneys will simply send letters to their clients' last known addresses. Once you learn their wishes, carry them out. If you are going to destroy a file, make sure you follow through with the notion of destruction. "Destruction" does not mean leaving the file in a dumpster behind the office. You should incinerate or shred these files. You cannot compromise your client's confidences, even in file destruction. Again, document your actions. Track the client name, file matter, method of disposition (destroyed, returned) and date of disposition.

Turning to one specific business concern, contact your malpractice insurance carrier well in advance of closing. The purpose is to begin the process of learning about the options for

obtaining an extended reporting endorsement (ERE - more commonly referred to as a “tail policy”). This endorsement is not a new policy. It simply provides an attorney the right to report claims to the insurer after a policy has expired or been cancelled. Again, it is important to note that under most ERE provisions the purchase of the endorsement is not one of additional coverage or of a separate and distinct policy. This means no coverage will be available for a wrongful act that takes place during the time the ERE is in effect. So if a claim arises several years post retirement out of work done in retirement, for example writing a will as a favor for a friend, there would be no coverage for that claim under the ERE. That’s worth remembering.



Risk Management Questions?

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