



# Turning Out The Lights Without Leaving Your Clients In The Dark.

Exit planning is a hot topic in North Carolina although we are certainly not the first state to tackle these issues. Keith Kapp, President of the North Carolina State Bar in 2013, called for the Bar to re-examine and improve our approach to both the beginning and the end of law practice. Despite this call to arms and recognition of a need for change in the legal profession, Warren Savage, a claims attorney with Lawyers Mutual, finds it surprising “how many lawyers avoid preparing for the inevitable end of their careers until after that end arrives at an unexpected time.” He says, “While legal careers will almost certainly end because of a career change, retirement, health, or death, a surprising number of

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lawyers reach that end without having considered and prepared for the recurring issues common to winding down a law practice.”<sup>1</sup> Therefore, exit planning appears to be both a big challenge for attorneys, as well as, an opportunity for improvement in the legal profession.

Exit strategies can encompass any one of a number of different scenarios:

1. Winding down and closing the doors of the practice;
2. Selling or merging the law practice; or
3. Internally transitioning the law practice to another attorney in the firm.

Each strategy comes with its own challenges, and it takes time and

commitment to successfully implement. Regardless of the road you choose, the key is to start early in developing your plan so your clients, your employees, and your family are protected. A great resource for attorneys interested in creating such a strategy is *Turning out the Lights: Planning for Closing Your Law Practice*, a publication of the North Carolina Bar Association Rich Harris Committee. The committee published the procedural guidebook to help lawyers plan for untimely events that might necessitate the closing of a law practice.

## To Sell or Not to Sell

The American Bar Association estimates a vast majority of lawyers, particularly solo practitioners, do not have a succession plan in place. Likely, this is because it takes time and commitment which can be challenging when running a busy law practice. However, attorneys who develop a plan – and do it early – are in a better position to protect their clients, employees, family and reputation.

## Selling a Law Practice

The current version of Rule 1.17 of the Rules of Professional Conduct permits a lawyer or law firm to sell or purchase a law practice or area of law practice, including good will, if certain conditions are met. Often the lawyer interested in selling his or her law practice already has qualified and interested buyers employed at the firm.

However, it can be challenging to determine how to value and set a price for the law practice. Attorneys may have inaccurate perceptions that their

practice has little or no real value although that is usually not the case. One way to ensure an objective valuation is to hire a business appraiser and/or a professional business broker. The consultant can assist in not only determining the value of the practice, but also providing knowledge of the process, marketing the practice, dealing with unqualified buyers, attracting qualified buyers, and negotiating a price once a qualified buyer is located.

## Closing the Doors of a Law Practice

Closing, as opposed to selling, the law practice involves different issues. The most important considerations are to start early, create and utilize a timeline and checklist, and update it often. The process should be implemented over a period of six months to one year at a minimum. See the checklist on page 2.

## Contingency Plans

At this point, you may be thinking retirement is too far into the future to even consider selling or closing your law practice. However, at a minimum, it is important to plan for contingencies in the event of the unexpected. Advance designation of another lawyer to assist with client matters is critical when a temporary disability or emergency occurs. Lloyd Cohen is a solo practitioner and the author of *Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events*. Mr. Cohen's own office experienced a short shutdown due to his sudden illness:

During my absence from the office, my manual is getting its first real-life test. The good news is that having a manual available has been a comfort that helped the office to continue to run smoothly. Those

<sup>1</sup>The Senior Lawyer Division of the NCBA Newsletter. “What to Expect When You’re Expecting to Retire,” Section Vol. 21, No. 2 (March 2013).



closest to me were able to check the physical and clerical aspects of the office. Lawyers with whom I've developed a rapport for such a contingency were notified. A lawyer was able to screen both the physical and electronic calendars for appointments, court appearances, and deadlines. Rescheduling client appointments far ahead of time was appreciated. Immediately directing e-mail to auto-reply "out due to illness" worked well. Bill-pay and money-transfer functions were attended to. Having my medical contacts and information organized was helpful. I found that keeping updated with the continuing evolution of technology and proliferation of passwords to be a challenge, but overall, client confidence was maintained and opposing counsels cooperated.<sup>2</sup>

Mr. Cohen, in his manual, advocates safeguarding your practice with five practical steps: "Define, Enable, Empower, Keep, and Inform." Even if you do not have time for the entire manual, his short article, "How My Emergency Plan Saved My Practice," is worth the ten minute read and may be the spark to encourage you to create a plan so your clients and your practice aren't left in the dark.

### CHECKLIST FOR CLOSING YOUR LAW FIRM

Closing a law practice takes time and planning. Ensuring your clients and their files are taken care of should be a principal concern once you have made the decision to close your practice and have informed staff of your plans. Although individual circumstances will dictate how much time you have available, attempt to complete and close out as many clients as possible. The following is a checklist that you can modify to your particular circumstances:



#### For Closed Client Files:

- Determine if any inactive clients should be notified. If the file or client matter has been closed for more than six years, the file generally can be destroyed as long as client confidentiality is preserved. If six years or less, the files should be retained and the client notified how you will be storing the files and how the file may be retrieved.
- Create a record of all destroyed files.

#### For Remaining Active Clients and Files:

- Calculate any accounts receivables and try to collect the balances before making the announcement if possible.
- Prepare a letter for all active clients. Advise the clients about the termination of the representation; the status of their cases and any pending deadlines; the need to retain new representation, if necessary; and how to receive their files. Try to contact clients personally first, if possible, before sending the letter.
- Get the client's prior consent, if you are planning to transfer any files to a new lawyer.
- Prepare and file withdrawal motions where necessary.

- It is a good idea to keep at least an electronic copy of all files.
- Determine if you may need to refund money to any of your clients, particularly in the case of flat fees designated as "earned upon receipt."
- Resign from any fiduciary position held, such as administrator, executor, etc. that cannot be completed.

#### Banking and Accounting:

- Review accounts payable and contact vendors to arrange payment of bills.
- Check for fee sharing and fees owed to co-counsel.
- Reconcile and close trust and fiduciary accounts. Disburse funds held in your trust account to appropriate client or third parties with final accounting to the clients.
- Research current escheat law if you have unclaimed funds in your trust account.
- Notify the State Bar when the trust and fiduciary accounts are closed.
- Preserve the financial records for the appropriate period of time. Trust records must be maintained for six years.
- Determine if there is other non-cash client property being held that must be returned to the client.

<sup>2</sup> Lloyd D. Cohen, How My Emergency Plan Saved My Practice, GPSOLO, a publication of the American Bar Association, vol. 29, no. 4.



- Determine a closure date for all other accounts.
- Terminate all bank account direct pay arrangements from the operating account.
- Determine which state and federal offices should be contacted.
- Discuss filing final tax returns with an accountant.
- Cancel any credit in the name of the business entity.

### Insurance:

- Cancel all relevant insurance including office, liability, etc., but only after operations have ceased. Discuss the timing with your insurance agent.
- Determine need for professional liability tail coverage that would cover you for any malpractice claims that arise after you have stopped practicing for malpractice incurred while you were still practicing.
- Consider COBRA options for health insurance.
- Determine rollover options for retirement plan for you and staff.
- Determine if life and disability insurance may be rolled into a personal policy.

### State Bar and Bar Associations:

- Call the membership department at the N.C. State Bar to update membership records with your status and any new contact information. You may submit a petition for transfer to inactive status, which must be received by December 31st to avoid dues for the following year.
- Contact all other associations and professional organizations to update membership records with your status and new contact information.

### Equipment, Furniture, and Office Space:

- Scrub computers, digital copiers, and other electronic devices, including smart phones, of software and client information to ensure confidential information is not compromised.
- Consider how to dispose of equipment, furniture, and office supplies.

- Determine move date and arrange moving service.
- Coordinate with the landlord if rental space.

### Miscellaneous:

- Dissolve the business entity.
- Terminate all firm e-mails accounts and any social media sources.
- Consider setting up a static web page on your website with information on the closure of the firm and how client files may be obtained.
- Cancel subscriptions and on-line accounts.
- Cancel vendor accounts including courier and express accounts.
- Cancel any advertisements by the firm and any legal directory listings.
- Determine whether a post office box is needed for post-dissolution mail.
- Disconnect utilities including phone. Determine whether the firm needs to maintain the number for a period of time with a recording that gives information regarding the dissolution and client files.
- Determine what disclosures should be made to employees concerning termination of employment.

This list is not comprehensive and does not cover every situation. Hopefully, it may serve as a starting point for building and completing your own checklist.

### ETHICAL CONSIDERATIONS REGARDING THE SALE, PURCHASE, OR DISSOLUTION OF A LAW FIRM

Ethical responsibilities should be one of the most important considerations in the sale, purchase, or dissolution of a law firm.

The Rules of Professional Conduct provide that the practice of law is a

profession and not merely a business; and further, clients may not be purchased and sold at will. The Rules also make it clear, while a lawyer may sell or purchase a law practice, the lawyer must uphold certain professional responsibilities.

### Duties Owed to Clients

Rule 1.17 of the Rules of Professional Conduct provides a lawyer or law firm may sell or purchase a law practice or an area of law practice as long as several conditions are met: (1) Seller does not continue to engage in the private practice of law from an office that is within a 100 mile radius of the purchased practice.

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*(Note: there is a recent amendment which would permit a lawyer to continue to work for the law practice as an employee after its sale – see blog at [brockerlawfirm.com](http://brockerlawfirm.com) – “Now You Can Retire... Or Not”)* (2) The entire practice or entire area of practice must be sold to a lawyer or law firm; (3) Written notice is sent to each of the seller's clients; (4) If a client cannot be given notice, an order by the court transferring representation of that client to the purchaser must be obtained; (5) The fees charged to clients may not be increased by reason of the sale; and (6) The seller and purchaser may enter into reasonable finance arrangements as the sales price does not need to be paid in one lump sum; however, the seller may not continue to have control over the practice. The requirements in Rule 1.17 do not apply to the sale of a law practice to lawyers who are current employees of the firm. See 98 FEO 6.



RPC 48 outlines the professional responsibility of lawyers involved in a law firm dissolution. The dissolution of a firm requires consideration of several principal areas: (1) The continuity of services to clients should be paramount. Any attorney involved in a client representation at the time of dissolution has an obligation to continue the representation until the matter is concluded or the attorney is required or permitted to withdraw; (2) The rights of clients to counsel of their choice and the required notifications; (3) The duty of the firm's principals to deal honestly with each other and not involve clients in any disputes resulting from the winding down process; and (4) The protection of and accounting for all client property.

Whether selling or winding down a practice, the client's relationship with the departing attorney will end. When terminating the representation of a client, the lawyer must comply with Rule 1.16 requiring notice to or permission from a tribunal as necessary. Upon termination of representation, a lawyer must take steps to reasonably protect a client's interests including: (1) giving notice to the client; (2) allowing time for retention of other counsel; (3) surrendering papers and property to the client to which client is entitled to; and (4) refunding any advance fee payments which have not been earned or incurred.

### **Handling Client Files**

RPC 209 rules an attorney may dispose of closed client files subject to certain requirements. No particular method of destroying files is proscribed but the method used must preserve client confidentiality. With the consent of a client, a closed file may be destroyed at any time. However, the lawyer should review the file and retain any items in the file that belong to the client or contain information useful in the assertion or defense of the client's position where the statute of limitations has not expired.



Absent the client's consent, the client file must be retained for a minimum of six years after the conclusion of the representation, and a record must be maintained of all destroyed client files.

In addition to retaining the client file for six years after representation has concluded, a lawyer must maintain complete and accurate records of all client property entrusted to the lawyer for a period of six years immediately preceding the lawyer's most recent fiscal year end as required by Rule 1.15.

RPC 234 rules an inactive client file may be stored in an electronic format provided documents with legal significance in their original format are preserved and the electronic documents can be reproduced on paper.

### **Communication Concerning Change of Status**

Rule 7.1 provides communications about a lawyer's services cannot be misleading, so all ads, websites, directory listings, social media, etc. must reflect the changed status of the law firm.

### **CONCLUSION**

While it is true many attorneys reach the end of their career without considering and preparing a succession plan, hopefully, N.C. lawyers will lead the way and change that. Although there is no doubt exit planning is a challenge, it is also an opportunity for you to create a plan so your clients and your practice are not left in the dark.