

Guidelines to Closing Your Law Practice – A Risk Manager’s Perspective

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Meet Mark:

Mark Bassingthwaighte, Esq., serves as Risk Manager at [ALPS](#), a leading provider of insurance and risk management solutions for law firms. Since joining ALPS in 1998, Mark has worked with more than 1200 law firms nationwide, helping attorneys identify vulnerabilities, strengthen firm operations, and reduce professional liability risks.

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A lawyer can decide to close her practice for a number of reasons. Disability, retirement, disbarment, a move out-of-state, a career change, or a need to care for someone else 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 post 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 your obligation to protect client confidences as well as the interests of your clients make closing a law practice a bit more complicated than closing other types of businesses. In addition, because the Rules of Profession Conduct differ from state to state, a review of your local rules and ethics opinions perhaps coupled with a call to your local bar counsel would be well advised early in the process. The following are the key steps that one must take.

Determine What Work Can Be Completed Before Closing:

The first step you should take after making the decision to close is to determine what matters can be completed prior to closing and then see that enough time is set aside to enable you to follow through. This does mean you will need to decide when to stop taking new matters on and when to notify staff because these people will be interacting with the public as well as current and past clients once the news breaks.

Notify Clients with Active Matters:

The second step is to let all clients with active matters that cannot be completed before you close your practice know of the upcoming change. At a minimum, this notice should inform the client of any relevant time limitations or time frames, provide instructions as to how and where they may obtain their file, and advise them to find a new attorney as quickly as possible. An offer to assist these 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 their file at some later point in time. This is the reason that some jurisdictions also require that a similar notice be sent to past clients. Finally, and where called for, these initial notices 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.

Return Client Property and Document File Transfers:

As clients respond to these notices, remember to retain a copy of the 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. Think about it this way. Originals belong to the clients, and copies belong to you.

Remember to document and maintain a record of the disposition of these 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 their file.

Manage Active Litigation and Court Obligations:

On matters that have pending court dates, depositions, or hearings, have a conversation with the client 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.

Review Old Files:

If, over the course of your career, you failed to review and destroy old files that no longer needed to be retained, do it now because the costs to continue to maintain closed files can be significant. And while there is an ethical obligation for you to do so, you really don't want to unduly burden a spouse with this should he or she outlive you.

When you originally closed the file, hopefully all original documents belonging to the client were returned at that time. If you did not, again, 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.

Address File Ownership and Destruction Concerns:

In a number of jurisdictions, the file belongs to the client. Because some clients will want their original file as opposed to having it destroyed, this means that you shouldn't unilaterally 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 in accordance with any ethical guidelines set forth in your jurisdiction.

Many attorneys often try sending letters to their clients' last known addresses, at least with files closed in recent years. Once you learn their wishes, carry them out. If the decision is to have the file destroyed, do so responsibly. The word "destruction" does not mean leaving a bunch of old files in an alley dumpster behind your office. You need to incinerate or shred these files and if they are digital files follow through with proper digital destruction best practices because you cannot compromise your client's confidences, even during a file destruction process. As with file transfer protocols, document your actions. Track the client's name, file matter, method of disposition (destroyed, returned), and date of disposition.

Contact Your Malpractice Carrier About Tail Coverage:

To provide 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 with 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 of 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. Trust me, this is something you never want to forget.