

## **Checklist for Closing Another Attorney's Office**

If you are handling the closing or sale of another attorney's practice, the following checklist will be of assistance to you and your staff. The reason that the attorney is closing his or her practice will also affect how you make these decisions. For example, if the attorney is disabled or deceased, you may need to make decisions without the attorney's assistance. To the extent that the terminating attorney or his or her staff is available, you should make every effort to use that assistance.

Costs involved in taking over the responsibility for another attorney's practice can be substantial. Be prepared and be careful about who is responsible for these expenses.

The term "Affected Attorney" refers to the attorney whose office is being closed or sold. "Closing Attorney" refers to the attorney who is handling the closing or sale of another attorney's practice. "Acquiring Attorney" refers to one who is purchasing another attorney's practice.

1. Check the calendar and active files to determine which items are urgent and/or scheduled for hearings, trials, depositions, court appearances, etc. If possible, discuss with the attorney the status of open files—what has been completed, what has not, what has been billed, etc. If a sale of the practice is being contemplated or pursued, whether by the Affected Attorney or the estate, review and understand DR 2-111 which has critical notice and time requirements.
2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission to postpone or reschedule (see CPLR 321(c)). If making these arrangements constitutes a conflict of interest with your own clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)
3. Consider consulting other lawyers if you do not have the expertise in one or more of the areas in which the Affected Attorney practiced.
4. Consider the overhead costs involved in purchasing a practice or closing a practice.
5. Contact courts and opposing counsel about files that require immediate discovery or court appearances. Reschedule hearings or obtain extensions where necessary. Confirm extensions and reschedulings in writing.
6. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
7. Look for an office procedures manual. Determine if there is a way to get a list of clients with active files.
8. In cases where the client is obtaining a new attorney, be certain that a Substitution of Counsel is filed.
9. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Affected Attorney as attorney of record. Review DR 2-110 and DR-2-111.
10. Send clients who have active files a letter explaining that the law office is being closed, instructing them to retain a new attorney and/or to pick up the open file. Provide clients

with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately.

- If you, as Closing Attorney will represent the Affected Attorney's clients, or if you are buying the practice, consider whether the fee policy will be the same as the Affected Attorney's policy. For example, if hourly rates are used, and if so, are they similar? Are set fees used, and are they similar? Have retainers historically been required, and are the policies and retainer requirements of the purchasing attorney the same? Disclosure of these items is required under the disciplinary rules governing the sale of a law practice [DR 2-111].
- In open estate files, are your practices consistent with the Affected Attorney's practices with respect to what is covered on a quoted fee? For example, is a fee for probate limited to just the pro-bate of the will or does it cover estate tax return preparation, will contests, etc. Carefully review retainer letters and send modifications if necessary. Note that the DRs require a notice as to whether the Acquiring Attorney is going to honor the Affected Attorney's retainer/engagement agreements and arrangements. One attorney may have varied fee arrangements. Make sure you know what you are agreeing to before stating that you are honoring "all" the arrangements with all the clients.
- If the Affected Attorney is available and willing, he or she should introduce you to non-lawyer staff members, and referral sources such as insurance agents, bankers, realtors, and accountants with whom the Affected Attorney worked. If the Affected Attorney is not available or willing to assist in this capacity, you should make these contacts immediately, not only for purposes of pre-serving client relations, but also to determine the location of clients, history of clients, etc. Many clients work with a team of advisors and, with the client's consent, you should have discussions with each of these other professionals. Clients may be looking to these other advisors for recommendations for new counsel.
- Make sure that all court cases have either a motion and order allowing withdrawal of the Affected Attorney or a Substitution of Attorney filed with the court.
- Make copies of files for clients. Retain the Affected Attorney's original file. All clients should either pick up a copy of their file (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and there are original documents in it that the client needs (such as a title abstract to property), return the original documents to the client and keep copies for the Affected Attorney's file. Determine who or what entity is responsible for storing the Affected Attorney's files and records. Return original wills to clients.
- Make contact with firms or practices with which the Affected Attorney was associated to determine what, if any, files remain with those practices. This will save the acquiring attorney a significant amount of time "searching" for files demanded by clients for past representation by the Affected Attorney. Also, determine who will bear the cost and the responsibility for acquiring or copying those files: Is it the closing attorney, the Affected Attorney or the court or other

agency that has taken over the primary responsibility for the Affected Attorney's practice?

- Consider file storage: The older the practice, the more time and expense will be involved in file review and management.
  - Determine whether "closed" files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased, and that the file is closed. Others may never take this step and always assume that the client may be coming back for further representation.
  - When returning files, make sure that you are returning files to the proper "client." If a husband and wife have a will file from years ago, and the wife responds to your client inquiry letter by asking for the file, do you send back both wills? We advise not. What if there has been a divorce, or there is presently a dispute between the husband and wife? The same rule applies with corporations, shareholders, partners, etc. Obtain consent from all that are involved. Look for court or disciplinary committee guidance where appropriate.
  - Review the content of files before returning them to clients who have requested them; decide whether you need to retain a copy of all or some portion of the file, in relation to any potential liability you might face for having been responsible at some point for the file. Consider retaining documents for the benefit of the Affected Attorney so that her or his estate could defend any claims against them? Proceed with caution.
11. Advise all clients where their closed files will be stored, and who they should contact in order to retrieve a closed file. Again, carefully address the issue of file storage costs with all parties.
  12. To locate clients for whom there is no current address, contact the postal service, referral sources of the Affected Attorney, and clients in the same geographic area. Consider publication to advertise that the firm has closed—be careful about any specific comments concerning Affected Attorney's actions that led to closing of the office.
  13. If the attorney whose practice is being closed was a sole practitioner, try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Affected Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
  14. Make arrangements through the executor or through the Affected Attorney to obtain reporting endorsement coverage on professional liability insurance for continuing malpractice insurance.
  15. Obtain written instructions from clients concerning any funds in their trust accounts. Contact other signatories on the IOLTA account. Comply with DR 9-102 with respect to having the IOLTA account assigned to new counsel if desired. Determine responsibility for the IOLTA and other attorney escrow accounts immediately. Your rights and obligations as the Acquiring Attorney must be known—potential liability is significant.

16. Prepare a final billing statement showing any outstanding fees due, and/ or any money in trust. Remit money received from clients for services rendered by the Affected Attorney to the Affected Attorney or his/her estate. Remember, in many cases, the client has an entirely different understanding of what the billing arrangement is than the Affected Attorney. Be prepared for the time and expense of discussing and negotiating fee arrangements with clients. Immediately notify, and schedule a meeting with the Affected Attorney's accountant to obtain a full understanding of the financial reporting policy of the Affected Attorney. If the Affected Attorney did his or her own accounting and tax preparation, the Closing Attorney's accountant should be given immediate access to books and records to determine tax and financial liabilities of the Affected Attorney.
17. If authorized, pay business expenses and liquidate or sell the practice. If the Affected Attorney is deceased, work with his/her executor in taking care of these matters.
18. Review and analyze technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Affected Attorney or his/her staff should participate in transferring over not only current technology in use but also provide access to systems that have historically been used by the attorney but which are not current. A significant amount of client information exists in the old files and systems. Obtain passwords. Review "vendor" relationships with the Affected Attorney's vendors. Were prepayments made for services, products that are not going to be used? Are there outstanding bills for storage of files, stationery, supplies, etc. that must be paid, and if so, who is responsible?
19. Review business insurance policies. When are renewal policies due? Which policies can be renewed and which can be cancelled, and by what date? Some policies may be cancelled mid-term and a pro-rata premium refund may be available, depending on the type of coverage. Also, if a Business Overhead Expense (BOE) policy is in place, and if the Affected Attorney suffered a period of covered disability prior to the office closing, benefits may be available for some office expense.