

## **CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE**

This is a checklist for an attorney who is closing another attorney's practice. The reason that the attorney is closing his or her practice will affect how you proceed. 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 attorney and his or her staff are available, you should make every effort to seek their assistance. If you are closing an attorney's practice and selling it to another attorney, please refer to *Selling a Law Practice Guide*.

Costs involved in closing for another attorney's practice can be significant. Be prepared and be careful about who is responsible for these expenses.

The term "Absent Attorney" refers to the attorney whose office is being closed and whose practice is being terminated. "Successor Attorney" refers to the attorney who is closing the Absent 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 Absent Attorney the status of open files. If the attorney has died or is otherwise unavailable, contact the secretary, paralegal or other assistants who worked with the Absent Attorney. Staff members often have relationships with the clients and a great deal of helpful information. If possible, retain and compensate the staff while you are closing the Absent Attorney's practice.

On active litigation cases, expect a full and active litigation calendar awaiting compliance. Immediately review upcoming trial dates and note of issue filing deadlines, scheduled court dates, appearances, depositions, motion return dates and filing dates for briefs, pleadings and discovery responses. Obtain a run of the calendar for the next six months. Expect that some active and upcoming dates may not be docketed on the calendar. Discover these by reviewing each case file, and communicating with opposing counsel or the court. In civil litigation, many cases are governed by a judicial preliminary conference order which directs that each phase of a case occur by a certain date. Check the preliminary conference order in every case. If extensions are needed on the preliminary conference scheduling order, seek extensions in writing well before close of the discovery period. Determine what can be continued and what needs to be dealt with. Courts and opposing counsel are generally cooperative about continuing matters when disability strikes, but need as much advance notice as possible.

2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission to postpone or reschedule. (If making these arrangements constitutes a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs. Talk to clients about retaining new counsel to take over responsibility for their matters).

3. Contact courts and opposing counsel for files that require discovery or court appearances immediately. Reschedule hearings or obtain extensions where necessary. Confirm continuances in writing.
4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
5. Look for an office procedures manual. Determine if there is a way to get a list of clients with active files. Contact clients with active files and explain that the Absent Attorney's law office is being closed and that you are handling the closing. Confirm this in writing. (See *Letter from Successor Attorney Advising That Lawyer is Closing Law Office*.) Advise the clients to promptly retain new counsel and make arrangements to have their files returned to them or transferred to new counsel. Provide clients with a date by which they should pick up their files or send instructions to deliver the file to another attorney and describe the consequences of their failure to do so.

You may recommend successor counsel to the client, including yourself. Transfers of files and changes of counsel often raise issues of fees owed to the Absent Attorney and must be dealt with at the time of transfer. For example, if a matter was being handled on a contingency fee basis, attempt to negotiate the Absent Attorney's share of such fee with the attorney who is taking over the representation, before the file is transferred or the new attorney substituted as counsel. Similarly, if a matter was being handled on an hourly basis and there are outstanding fees owed to the Absent Attorney, payment should be obtained or secured, if possible, before the file is delivered to the client or transferred to new counsel. If satisfactory arrangements or agreement is not possible, you may need to file an application with a court. Charging and retaining liens may be asserted in appropriate cases, with some limitations.

6. For cases before administrative bodies and courts, obtain permission from the clients to submit a Motion and Order to withdraw the Absent Attorney as attorney of record. Review Rule 4.3 of the Uniform Superior Court Rules of Georgia. If there is no Substitution of Counsel, you may have to make a motion to have the Absent Attorney relieved of representation of the client.
7. In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
8. Pick an appropriate date and check to see if all cases have either a motion and order allowing withdrawal of the Absent Attorney or a Substitution of Attorney filed with the court.
9. Make copies of files for clients. Retain the Absent Attorney's original file. All clients should either pick up a copy of their files (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 to property), return the original documents to the client and keep copies for the Absent Attorney's file.

Original wills and other original documents must be returned to clients and may not be destroyed or otherwise disposed of. In the case of original wills, if you are unable to locate the clients after a diligent search, you may file such wills with the Probate Court (be aware of filing fees) or deposit them with an appropriate depository (e.g., the appropriate county bar association) and notify the clients in writing, addressed to their last known address. Do NOT destroy them. (See chapter on *File Retention*.)

When returning files, make sure that you are returning them to the proper client. If a husband and wife executed wills years ago and the wife responds to your client inquiry letter by asking for the file, do not send back the husband's will without his written authorization. The same rule applies to corporations, shareholders, business partners, etc. Seek court or ethics committee guidance where appropriate.

10. To locate clients for whom there are no current addresses, contact the postal service and other sources of information. If necessary, consider publication to advertise that the firm has closed. Be careful not to disclose confidential client information, including the existence of the attorney/client relationship, to third parties.
11. All clients should be advised on where their closed files will be stored, and who they should contact in order to retrieve a closed file.
12. Send the name, address, and phone number of the person who will be retaining the closed files to the State Bar of Georgia, Office of General Counsel, 104 Marietta Street, N.W., Suite 100, Atlanta, GA 30303.
13. If the attorney whose practice is being closed was a sole practitioner (the Absent Attorney), try to arrange for his or her phone number to have a forwarding number. This eliminates the problem created when clients call the Absent Attorney's phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.
14. Contact the Absent Attorney's malpractice insurance carrier, if applicable, about extended reporting coverage. Make arrangements through the Absent Attorney or his or her fiduciary to obtain reporting endorsement coverage on professional liability insurance for continuing professional liability coverage. Review other business insurance policies and determine which may be canceled and whether there is coverage in the event of the Absent Attorney's disability or death.
15. Notify the Absent Attorney's accountant of your involvement in closing the Affected Attorney's practice and seek assistance in reviewing financial records, including IOLTA and escrow accounts. If the Absent Attorney acted as his or her own accountant and tax preparer, the Successor Attorney should retain an accountant to determine the financial status and tax liabilities of the Absent Attorney. The Successor Attorney should decide how financial accounting will be carried out during the period in which the Absent Attorney's practice is being closed.

16. *(optional)* If you have authorization to handle the Absent Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine if funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should either be returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due, and/or any money in trust. (To withdraw money from the Absent Attorney's accounts, you will probably need to be an authorized signer on the accounts or you will need a written agreement or a limited power of attorney. If this has not been done and is not obtainable from the Absent Attorney due to death, disability, impairment, or incapacity, you may have to request the State Bar of Georgia to petition the court to take jurisdiction over the practice and the accounts. If the Absent Attorney is deceased, another alternative is to petition the court to appoint a personal representative under the probate statutes.) Review applicable retainer agreements and engagement letters. If there are fee disputes with clients, you may have to negotiate and settle outstanding fees owed to the Absent Attorney. Notify the Absent Attorney's accountant to obtain a full understanding of the Absent Attorney's accounting procedures. Money from clients for services rendered by the Absent Attorney should go to the Absent Attorney or his/her estate.
17. *(optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletters, The Georgia Bar Journal, and other appropriate places.
18. *(optional)* If your arrangement with the Absent Attorney or estate is that you are to be paid for closing the practice, submit your bill, as defined in the Georgia Rule of Professional Conduct 4-228. Receiverships.
19. *(optional)* If your arrangement is to represent the Absent Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.
20. *(optional)* If authorized, pay business expenses and liquidate or sell the practice. If the Absent Attorney has died, work with his or her fiduciary to resolve these matters.
21. *(optional)* Begin terminating all vendor and other contractual obligations of Absent Attorney, including lease obligations.