

CLOSING A LAW PRACTICE CHECKLIST

1. Notify all current clients.

Most lawyers who wish to close a practice will find that they have current open matters. You may, of course, simply decline new work and gradually decrease your workload until the affairs of all current clients have been completed. If, however, you need to close a practice abruptly because of health, financial or other considerations, you will need to take steps to ensure that current clients are not harmed. (See *Timeline for Closing Your Law Practice*.)

Indeed, it is possible in certain situations you may find you cannot completely close a practice until you have concluded representing a particular client – for example, you are currently in litigation and cannot gain the court’s or the client’s permission to withdraw.

There are two ethics rules that are relevant to closing your practice, Rule 1.16(d) and Rule 1.17. (See *Appendix A-Ethics Rules Relevant to Closing a Law Practice*.)

2. Finalize as many active files as possible.

Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time frames important to their matters. The letter should explain how and where they can pick up copies of their files and should give a deadline for doing so. (See *Appendix B-Letter to Client Attorney Advising That Lawyer Is Closing His/Her Law Office*.)

If possible, provide sufficient advance written notice of the closure for your practice so as to provide clients with reasonable and sufficient time to make other arrangements.

For cases that have pending court dates, depositions or hearings, discuss with affected clients how to proceed. Where appropriate, request extensions, continuances and the rescheduling of hearing dates. Send written confirmations of these extensions, continuances and rescheduled dates to opposing counsel and to your client.

For cases before administrative bodies and courts, obtain clients’ permission to submit motions and orders to withdraw as counsel of record. Review Rule 1.16. (See *Appendix I-Motion to Withdraw as Counsel*, *Appendix K – Notification Certificate* and *Appendix L – Order Permitting Withdrawal of Attorney*.)

In cases where the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed. (See *Appendix J-Notice of Substitution of Counsel*.)

Select an appropriate date and check to see if all matters have a motion and order allowing your withdrawal as counsel of record or a Substitution of Attorney filed with the court. (See *Appendix I-Motion to Withdraw as Counsel*, *Appendix J-Notice of Substitution of Counsel*, *Appendix K – Notification Certificate* and *Appendix L – Order Permitting Withdrawal of Attorney*.)

Make copies of files for clients and yourself. All clients should either pick up their files (and sign a receipt of acknowledging that they received them) or sign an authorization for you to release their files to their new attorneys. (See *Appendix F-Authorization for Transfer of Client File* and *Appendix H-Acknowledgement of Receipt of File forms*.)

If you sold your practice, you will have already advised your clients of your prior intent to do so. You should still advise them also of your having completed the transaction, the location of their files in the event some clients have declined to retain the Successor Attorney and have not collected or released their files, and the name, address and phone number of the purchasing attorney. (See *Sale of a Law Practice Guide* for more information on this subject.)

3. Notify all clients for whom you handled matters that are now closed and check for client property in closed files.

Many lawyers who have been in practice for a number of years have accumulated material in their files that belongs to their clients. You may have original documents (wills, contracts, deeds), or material that was once used in evidence (bank statements, letters, insurance papers). Even if you do not hold material that belongs to them, the file belongs to the client and it's a courtesy to notify your former clients that the office is closing and to ask if they would like their files returned to them. (NOTE: If you are not planning to destroy the file, keep a copy of the file to satisfy the run of any applicable statute of limitation. (See *Appendix G - Request for File*.)

Tell all your clients that they can pick up their closed files and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy their files if they not wish to pick up their closed file. If a closed file is to be stored by another attorney, obtain the client's permission to allow the attorney to store the file for you and provide the client with the attorney's name, address, and phone number. (See *Appendix D-Authorization to Return or Store Files Letter* or *Appendix E – Notice Regarding File Destruction*.)

If you cannot reach former clients, you may want to consider taking out a classified advertisement, especially if you have been in a small town or an office established for a number of years.

4. Arrange for calls to be forwarded.

If you are a sole practitioner, arrange to have your office calls forwarded to you or another person who can assist your clients. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

5. Review procedure for retention and destruction of old files.

Most attorneys who are leaving the practice of law don't want to have to retain responsibility for hundreds or thousands of old files. If, however, you have a file retention policy for your firm that specifies that the files will be kept for a certain number of years, those files need to be kept in accordance with your policy, even if it means renting storage for them.

Many lawyers have no written policy. What happens to your old files in that case? There is no State Bar rule that specifies that files must be kept for a particular length of time. There is a four-year statute of limitations for filing a grievance against a lawyer, so many lawyers regard four years as an absolute minimum for preservation of material. (See *File Retention: What's the Ethical Thing to Do?* and *Developing a File Retention Policy for Your Firm* articles.) Trust account records should be kept for six years per Rule 1.15(I).

6. Review contents of any safe deposit boxes held by the firm.

Safe deposit boxes may contain property belonging to a client (i.e., wills), to a third party (objects intended to be used as exhibits in litigation), or to the law firm (stock certificates). Any property not belonging to the lawyer or law firm must be immediately returned. If the parties who own the property cannot be found, the law firm must hold the property in accordance with the Unclaimed Property Act.

7. Close out your trust account ledgers.

It is vitally important that you not close an office while holding client funds. Any monies you have in your trust accounts must be accounted for and either returned to the client, paid out for the purpose intended, or transferred to you as firm income. (Rule 1.16(d) ... lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.) Even if you feel certain you do not owe clients money, you should not leave money in a trust account if your firm has closed its doors. For one thing, the I.R.S. may later treat this as "constructive receipt" if the money was rightfully yours, and levy back taxes, fines and penalties against the income. Exception: If you hold money in trust for a client or third party who cannot be located, you may be required to continue holding it until it can be disposed of in accordance with the Unclaimed Property Act. Remember that "client property" can also be found in safe deposit boxes and, on rare occasions, in other bank accounts set up for the benefit of the client. (FAO 98-2)

8. Close your operating account and any other firm accounts.

Once your office is closed, make sure it looks closed from all angles. Once all outstanding bills are accounted for and paid, all client advances reimbursed and accounts receivable collected, close your business accounts. Transfer excess revenue into your personal accounts, tax-deferred accounts or capital accounts in a new firm. A final audit by a tax professional is always a good idea.

The issue of accounts receivable can be a thorny one. If your law firm consists of more than one person, you may need to leave open accounts until all “firm money” comes in or is written off, in order to properly distribute the earnings. Resist the temptation to have clients pay you directly in your own personal name if you are collecting firm payments. (See *Appendix C – Notice That File Should Not Be Closed.*)

If the firm has investment accounts or holds a financial interest in real property, these matters will need to be dealt with as well (probably by a competent tax advisor).

9. Check your malpractice insurance to see if you need tail coverage.

Depending on whether your insurance is claims-based or incident-based, you may need extra insurance to cover you for claims made after the office is closed and policy cancelled. Make sure you discuss your situation with your insurance carrier and get a recommendation.

10. Find and review other policies, leases or contracts.

Maintain a complete record of all current and past facility and equipment records, including deeds, mortgage, leases, and related materials. The law firm may be closing while a term exists on the office lease, while disability or key man insurance policies are still in effect, or while you are obligated under the terms of a contract for equipment. Locate all important papers of that nature to determine what the firm’s (or estate’s) responsibilities are. (See *Law Firm Master List of Contacts and Important Information.*)

You should maintain a complete and up-to-date employee file, including resumes, employment agreements, payroll and tax records and other significant documents. (See *Law Firm Master List of Contacts and Important Information.*)

Identify all outside service personnel and providers by name, address, phone and fax numbers, and email address. (See *Law Firm Master List of Contacts and Important Information.*)

11. Notify other interested parties of your new address/firm affiliation.

If you are retiring, you may wish to change your State Bar membership from active to inactive if you do not intend to practice law at all. (See Rule 1-201. Membership.) If the lawyer’s survivors must close down the practice themselves, they should immediately notify any courts in which the lawyer has practiced of the situation to determine if the lawyer has any matters pending with the

court. The clerks should be able to advise what proper procedure should be and the judges will probably be quite helpful in approving delays and even suggesting attorneys who may be able to step in. Also, you may wish to contact the State Bar for additional guidance.