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GUIDELINES FOR CLOSING A LAW PRACTICE

Closing your law practice can come as a result of many factors: retirement, merging firms, an appointment to the bench, sudden illness, death or disability. All of these different scenarios involve different parameters, but some basic similarities are involved.

Remember, your duty of competent representation includes an obligation to take appropriate steps to safeguard your clients' interests in all circumstances. A failure to properly plan or prepare for both anticipated and unexpected departures from your practice may expose your clients to significant damages or prejudice and subject law partners and family members to financial and emotional stresses associated with the winding-up process. It can also subject to your estate to legal fees if a trustee is required to be appointed.

The Office of Disciplinary Counsel has prepared the following checklist to provide some guidance and direction to the main issues that need to be addressed in order to fulfill your professional responsibilities when closing your practice.

CHECKLIST

- Carefully review your active file list to identify files that can be resolved and finalize as many 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 limitations and time frames important to their cases. The letter should also explain how and where they can pick up their files and should give them a deadline for doing this. A sample client letter is provided at the end of this document.
- For cases that have pending court dates, depositions or hearings, discuss with the clients how to proceed. Where appropriate, request extensions and continuances. Send written confirmations of these extensions and continuances to opposing counsel and to your client.
- For cases before courts and administrative bodies, submit a motion and order to withdraw as attorney of record as soon as possible.
- In cases where the client has chosen a new attorney, be certain that a substitution of counsel is filed.
- Pick an appropriate date and check to see if all cases either have a motion and order allowing your withdrawal as counsel or a substitution of counsel filed with the Court.
- All clients should either pick up their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. Original documents should be returned to the client, but you may retain a copy of the file for your records. For more information regarding client files, please refer to *L.E.I. 89-02: Copying Charges for Files* and *L.E.I. 92-02: Attorney Retaining Liens*.
- All clients should be told where their closed files will be stored and whom they should contact in order to retrieve them. For more information regarding the retention and destruction of closed client files, please refer to *L.E.I. 02-01*.

- ❑ In some cases it may be appropriate to prepare a transfer memo to the new lawyer that includes a summary of the file, important dates, tasks, issues, facts and limitations periods.
- ❑ Prepare final bills and an accounting of all trust money. Determine whether escrowed funds have been or need to be reimbursed. Promptly refund your clients any advance payment of fees that have not been earned.
- ❑ Close the trust account only when the balance is zero and all funds have been distributed and accounted for in accordance with Rule 1.15 of the Rules of Professional Conduct and State Bar Rule 10.
- ❑ Consider whether you will need to continue to operate your general accounts for a period of time after the practice is closed.
- ❑ If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your old number is called. This eliminates the problem created when clients get a recording stating that the number is disconnected and do not know where else to turn for information.
- ❑ Report all changes in contact information immediately to the West Virginia State Bar at 304-553-7220 or 866-989-8227. See also, www.wvbar.org.
- ❑ Refer to Rule 3.28 of the Rules of Lawyer Disciplinary Procedure for the additional duties of disbarred or suspended lawyers.

SUCCESSION PLANS

The Court adopted the changes to Rule 1.3 of the Rules of Professional Conduct and the Comments thereto, which indicate that a duty of diligence requires that solo practitioners have succession plans in place. Succession plans enable an individual lawyer or lawyers in a law office to protect the legal interest of the lawyers's clients in the event that the lawyer is unable to continue his or her law practice due to death, disability, impairment or incapacity.

NEED FOR TRUSTEE CAN BE COSTLY

If lawyers fail to have a succession plan in place at the time of the death or disability and there is no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, or the lawyer failed to comply with Rule 3.28 after disbarment or suspension, ODC will seek to have a trustee appointed pursuant to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure. The Court also adopted important changes to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure in November of 2015 that provide that the lawyer for whom a trustee has been appointed or the estate of a deceased lawyer for whom a trustee has been appointed is liable to the trustee for all reasonable fees, costs, and expenses incurred by the trustee as approved by the appointing court. To the extent that the approved trustee's fees, costs, and expenses are paid by the disciplinary authority or other third party, the lawyer or the estate shall be liable to make reimbursement to the disciplinary authority or other third party for such payment.

SAMPLE LETTER ADVISING THAT LAWYER IS CLOSING OFFICE

Re: *[Name of Case]*

Dear *[Name]*:

As of *[date]*, I will be closing my law practice due to *[provide reason, if possible]*. I will be unable to continue representing you on your legal matters.

I recommend that you immediately hire another attorney to handle your case for you. You can select any attorney you wish, or I would be happy to provide you with a list of local attorneys who practice in the area of law relevant to your legal needs. Also, information about The West Virginia State Bar's lawyer referral service that can be found at www.wvlawyerreferral.com. The West Virginia State Bar can also be reached at 304-553-7220 or 866-989-8227.

When you select your new attorney, please provide me with written authority to transfer your file. If you prefer, you may come to our office and pick up a copy of your file to deliver to that attorney yourself. Please let me know the name of your new attorney or pick up a copy of your file by *[date]*.

It is imperative that you obtain a new attorney immediately. This will be the only way that time limitations applicable to your case will be protected and your other legal rights preserved. *[Insert appropriate language regarding time limitations or other critical time lines that client be aware of]*.

I *[or name of attorney who will store files]* will continue to store my copy of your closed files for *[insert #]* years. After that time, I *[or name of other attorney if relevant]* will destroy my copy of the file unless you notify me in writing immediately that you do not want me to follow this procedure.

Within the next *[insert #]* weeks I will be providing you with a full accounting of your funds in my trust account and fees you currently owe me.

You will be able to reach me at the address and phone number listed on the letterhead until *[date]*. After that time, you or your new attorney can reach me at the following:

[Name]
[Address]
[Phone]

I appreciate the opportunity of providing you with legal services. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

[Attorney]
[Firm]