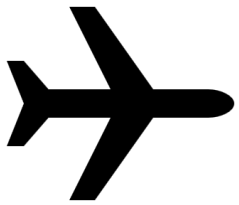




WINDING “UP” or “DOWN” our Law Practice



A ten thousand foot view

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By way of disclaimer...

This presentation is a general “overview” **only**. The manner in which a law practice may be operating presents multiple nuances, any single one of which requires devoted study in process such as:

- **Reason** for closing ?
 - Voluntary such as retirement, sale/transfer or health
 - Involuntary such as disability or death
 - involuntary by act of State Bar will not be covered as such closure is governed by the Bar
- Business **structure** ?
Sole practice, partners, corporate structure ?
- Are we “**closing**” or “**transferring**” ?
Maintaining an “of counsel” status?

MAJOR TAKEAWAY UP FRONT: EVERY law practice situation in winding itself “up” or “down” is **different**. No two clients are identical; no two law practices are exactly the same.

SUGGESTED business practices as general protocols.

Key items to consider that should be part of your practice while operating at “full speed”

Some “just in case” items that connect to having a practice pause or cease unexpectedly that need consideration as part of general business processes in regular operation:

1. *File retention policy* - *what is it? Enforce it. 7 yrs seems average.*
2. *Return originals to client ASAP* - *Get with the program; “electronic copies”*
3. *Maintain CURRENT client list* - *should be updated consistently with status*
4. *Website secure access* - *trustworthy access for emergency banner message*
5. *Communicate succession to heirs* - *suggest atty and an alternate WHO should review your law practice & secure checking accounts*
- *DISCUSS designation with possible reviewers*
6. *Communicate accesses to heirs* - *WHO can open the door, get mail, has access to checkbooks and computer database to secure same*
7. *Communication with BAR* - *instruct WHO advises State Bar immediately*

We're used to the business motto:

“The customer is king”



We lawyers actually have rules about it

In closing or transferring a law office, your “customer” is **YOUR client**; and it comes with particular ethical obligations covered in **B & P code, section 6068(e)** regarding maintaining **client confidentiality**.

Also, the **Rules of Professional Conduct** address the **transfer** of the business:

- advertising and solicitation **2-300**
- conflicts of interest **4-100**
- rules on sale / purchase **3-310**

*So you're going fishing as a new career... **Congrats***



...A look at a **PLANNED closure of a law practice**

Closure, whether retirement or transfer/sale requires significant planning for the orderly wind down of your legal practice.

NOTE: The State Bar requires attorneys to make themselves fully aware of the statutory and code requirements, including local requirements, in bringing their business to an end or to transfer their interest.

The **general** rule is that there is **NO** absolute rule that fits all. The business structure of a legal practice largely determines how such closures / transfers will take place and who will be responsible to execute duties.

The State Bar publication, “**Guidelines for Closing or Selling a Law Practice**” gives guidance that is quite valuable and is attached at the end of this presentation (*publication attached in [Appendix](#)*).

The following is not generally part of the State Bar guide but are suggestions that should be considered in bringing your practice to a close, starting with the easier; a **planned closure** of the business:

1. **Practical realities.** If yours is a sole practice the reality is:
 - employed staff will be faced with looking for new jobs - jobs that may come long before your planned closure. Those people may leave.
 - Who then will perform necessary tasks former employees did ?
 - As **clients** learn of office closure, there may be a very noticeable drop in income as they transfer existing matters and bring no new business
 - plan for the contingency of > in expense and < in income
2. **Start early.** At *least* **six months** before desired “fishing date” begin the orderly wind up.
 - lease considerations and negotiation - maybe month to month
3. **New matters ?** Newly opening matters whether for established or new clients bring challenge of concluding by your end date.
 - IF accepting any new matter, **must** advise client of closing plan and perhaps either associate counsel in matter with client approval or advise substitution may be required by _____. Disclose, disclose, disclose.
 - this is very “sensitive” given just the issue of attorney fees
 - likely the wiser course, even with established clients is to avoid taking on any new matter without very specific service agreement.

4. **Immediate review of all open matters.** What can be taken care of by close date; what likely will not be completed? Are you willing to keep matter through conclusion if going beyond?
 - Start conferring with potential recipient attorneys
 - Advise ALL clients in writing of intent to close and arrange to meet with update
 - remember: Clients may choose to switch attorneys and our planned closure is certainly a significant file event which must be communicated
5. **Full file review** (all files in office that were not part of open matter review).
 - **Enforce file retention policy.** Files closed in excess of your retention should be destroyed, respecting what is in your Fee Agreement. *(should be a regular protocol regularly enforced)*
 - is there a need to retain *any paper* files? Really? Scanning option
 - note: Estate Planning documents *ARE* generally retained
 - IF there is need to retain paper file, **where** then?
6. **Return original documents to clients.** Unless required, a scanned copy is appropriate as are electronic signatures. Return the originals to clients, suggesting electronic receipt for same in electronic file. *(this too is a suggested regular protocol that should be maintained)*

7. **Create a transfer plan.** Which attorney(s) will any open files be transferred to ?
 - attorneys competent to handle type of case
 - arrange for client to meet attorney and determine if assuming
 - client is free to select another attorney for substitution
 - have deadline for client to secure their own counsel if they wish
 - *Will motion to withdraw be necessary ?*

8. **Update Website.** If practice has a website, place banner message at least 60 days before office closing notifying that practice will be closing effective_____.
 - update site as appropriate with the contact information
 - be sure to maintain editing access for self *and one other* trusted person to site beyond closure date, removing access to any former employees

9. **Where storing business data after closing ?** What facility is in place to store data (yes, even paper...ugh) - 60 days before should be pretty accurate
 - closure does not relieve one of PII, HIPPA or client confidentiality
 - a box in the hall closet at home, no matter where you live, doesn't "cut it"

10. **File necessary documents with courts and agencies.** *To be done in last 60 to 45 days.* Sounds simple, but keep in mind this takes place near the very end of the business. Referring to item #1, do you still have the necessary staff in place ?
 - "necessary" means the persons who **know how** to file and often it's *not* us.

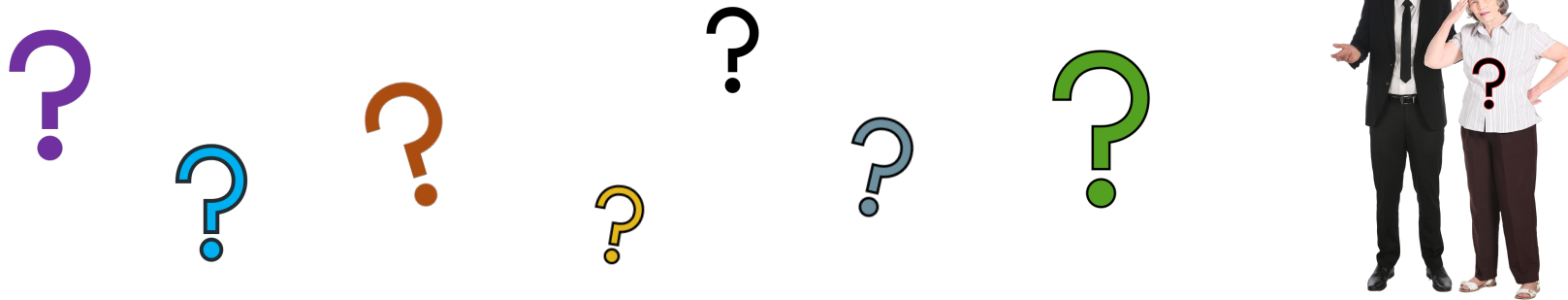
Before looking at the **UNPLANNED** closure of a law practice, a very brief look at when the “unplanned” can be “planned”

- As to the transfer of the law practice upon death or disability of an attorney, one can create an “**Agreement to Close a Law Practice in the Future**” (copy of sample agreement in [Appendix](#))
 - presupposes the attorney as a “planning attorney” has a designated attorney or firm who will be the “practice administrator” should that attorney become incapacitated or die
 - “practice administrator” files petitions and applications to assume role as attorney in fact over practice and to takes steps to dispose of practice, including sale of practice (including to themselves)
 - “planning attorney” has to make sure such agreement is in their general estate plan and that spouse consents to the terms

And now on to the more common situation.... When the UNPLANNED remains **UNPLANNED...**

A look that few *really* want to view... the **UNPLANNED** closure or interruption of a law practice

The death or disability of the actively practicing sole practitioner presents the challenge of “who does what” and the contingencies and confusion that often becomes the overwhelming problem for the family of that attorney.



Too often it is the attorney's clients who are without knowledge of the incapacity or death of the lawyer and turn to local resources of agencies such as the SGVLRs or perhaps the State Bar, neither who may have yet been informed.

UNPLANNED closure presents some unique challenges

REMEMBER: *This is a 10,000 - foot overview*

- The State Bar publication, “**Guidelines for Closing or Selling a Law Practice**” provides 50+ checklist items (*publication attached in [Appendix](#)*)
- **B & P Code § 6180** addresses requirement that a practice that **ceases** requires notice be given to clients and practice may come under jurisdiction of Court
- **B & P Code § 6190** addresses that an attorney’s **incapacity** may provide for Court jurisdiction of practice absent client having secured other legal counsel
- The challenge remains as to “**WHO**” takes on this responsibility for the deceased or incapacitated ? The people left behind have to attend to the matters at hand...
 - General provisions suggest executors, conservators, previously arranged other counsel or those appointed by the courts
 - But HOW does this process really become initiated as “time is of the essence” ? *The clients are calling daily, staff have questions...*

- Still the same **general** rule; that is that there is **NO** absolute rule that fits all. The business structure of a legal practice will most certainly determine how such closures or disability pauses will be administered and who will be responsible to execute duties.
 - a *solitary* practitioner does not have an associate; other structures may
 - fiduciary accesses within a law practice vary from practice to practice
 - who can write a rent check versus accesses to client trust account

- Remember those suggested business protocols referenced at the beginning ?

Those are now the key issues for the **UNPLANNED** closure and become the critical “ **seven deadly sins**” for the failure in not having communicated protocols in place, including:

1. Maintaining a **current** client list and inventory of pending cases in office;
2. Communicating where appearance calendar is located in office

3. Communicating to family member/trusted advisor the attorney who should handle the law practice as a matter of an “**estate**,” (having previously advised that attorney they are being designated)

- this attorney/firm acts as a sort of general contractor and should know all that needs to be immediately done with the courts and State Bar

4. Having someone besides oneself with secure access to firm website to post banner message at direction of estate attorney

- banner messages on firm website or “out of office” on email is excellent resource for communication to public and those who may have business need to communicate

- posted message should be governed by estate attorney

5. Communicating to family member and designated “estate attorney” (through family instruction or directly) WHO would be the *suggested* designated licensed attorney(s) to contact regarding the continuing needed legal conduct for appropriate type of cases

note: there are special provisions if the incapacitated/deceased attorney had custody of Estate Planning documents for deposit of documents with the Superior Court or assuming attorney (see “transfer-estate-planning” in [Appendix](#))

6. Communicating to family member/trusted advisor who has accesses to the office, mail, any account accesses, **including credit card.**
 - would avoid providing actual full account numbers, lest the communication become misplaced at the hands of family member/trusted advisor

7. Communicating to family member/trusted advisor ALL locations where business items may be (storage or vendor maintained)
 - location of the E & O policy is especially important

So just how is this communication taking place ?

Simple letter of instruction to family members/trusted advisor (likely the very first to know of one's disability or death.

This letter containing this essential information should be at home in known location or with family member/trusted advisor

Lastly. A look at our relationship with the **State Bar** after retirement; *our public status “after” we have ceased our active practice of the law ?*

Current state of public information on State Bar site may present inference one would **not** want as an epitaph to their legal career

Not Eligible to Practice Law

- “active” / “inactive” / “resigned” status - make a **choice**
- simply failing to pay dues as a “retiree” leaves a negative public impression on the site

CONSUMER ALERT

This attorney is suspended from the practice of law. As a result, the attorney is ineligible to practice law in California. The State Bar posts consumer alerts online when attorneys are suspended from practice. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

And then...a look at the **INEVITABLE**

- Membership status for a deceased member gets changed to deceased **only** when someone takes the initiative to inform the Bar
- suggest as a retired practitioner whether active/inactive or resigned, leaving instruction with family or trusted advisor to notify Bar that status should be changed to deceased (*a sample of such notice attached as “items concerning the California State Bar” in [Appendix](#)*)
- will require a copy of death certificate and cover letter to Bar

APPENDIX



guidelines-for-closing-or-selling-a-law-practicev.1.pdf



AGREEMENT_TO_CLOSE_LAW_PRACTICE_IN_THE_FUTURE_REVISED_08-1-2011.pdf



Transfer-Estate-Planning.pdf



Items concerning the California State Bar.pdf