WINDING DOWN, CLOSING UP OR SELLING OUT

BY BETTY M. SHAW

“A well-organized practice with documented procedures is critical to a smooth and easy closing up of a practice by another.”

Selling a Practice

If an attorney or the representative of a deceased, disabled or disappeared lawyer is selling a practice (Rule 1.17, Minn. R. Prof. Conduct), the seller usually has a duty to assist the buyer. This involves preparing the buyer to take over the practice, including the client list, the client file inventory, and the closed file storage location and inventory. The buyer should have complete information about the practice, including the names and addresses of clients, the fees charged, and the dates of services rendered. The buyer should also be provided with any other information that may be necessary to continue the practice.

PLANNING FOR THE UNEXPECTED

Rule 1.6 of the Minnesota Rules of Professional Conduct provides that a lawyer shall not reveal information relating to representation. However, this rule does not apply to information obtained in the course of representation of a client who has died or is incapacitated. Under these circumstances, the lawyer may disclose information that is necessary to assist the legal representative of the deceased or incapacitated client.

PLANNING FOR THE UNEXPECTED

In planning for the unexpected, it is important for the lawyer to have in place a contingency plan for the sale of the practice. This plan should include provisions for the transfer of client files and the management of the practice during the transition period. The plan should also address the financial aspects of the sale, including the negotiation of the sales price and the terms of payment.

PLANNING FOR THE UNEXPECTED

In conclusion, planning for the unexpected is critical to a smooth and easy closing up of a practice by another. A well-organized practice with documented procedures is essential to the successful transfer of the practice.

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PROFESSIONAL RESPONSIBILITY

...to recover or properly who all would agree files and to dispose of all remaining
arguments files appropriately. An attorney
may not, without client consent, simply hand a client a
matter over to another attorney. The Director's Office
issued an admonition to an attorney who failed to properly close down his prac-
tice. Instead of refunding the client's deposits, the attorney retained them and
transferred the client's fee to another attorney. By doing this, the attor-
ney remained responsible for the new attorney's failure to use the
representation has commenced, shall withhold
from the representation of a client for.

(2) The lawyer's physical or mental condi-
tion materially impair the lawyer's ability to
represent the client.

(3) The client's requirements or the in-
consistency of the representation of a client.

(4) The lawyer's physical or mental condi-
tion materially impair the lawyer's ability to
represent the client.

(5) The client's requirements or the in-
consistency of the representation of a client.

DISPOSING OF CLOSED FILES

It is a good practice to retain the files
the attorney's personal notes policy in a
engagement letter, retainer agreement or letter at the close of the representation.
A lawyer should not destroy or dispose of a
client file without destroying it. Before
arranging for a file the attorney should make
sure that all client property of any value
such as stock certificates, insurance, encour-
defaulted documents, original wills,
unrelated deeds, etc., has been returned or
permanently destroyed.

Client files and former clients have a rea-
sensible expectation that useful information in
the lawyer's files, and not otherwise easily
available to them, will be preserved for
a period of at least 15 years after the client's death, or, if the client dies within
seven years of the date of the last
transaction, for a period of not less than
five years after the last transaction.

The attorney should retain any information in the file that may later
serve a useful purpose to the client. The disposition of the closed files should be
revised to meet a reasonable time. What is reasonable will
depend in part on the nature of the represen-
tation. It is probably prudent for an
attorney to keep client files at least until
the applicable statute of limitations on mali-
conduct has run. Settlement documents
and trust account books and records must be
kept for six years after completion of the representation.

An attorney may destroy the files at the end of the retention period by shredding
(document shredders) or burning (sub-
sequent files in heavy duty opaque trash).

NOTES

1. Rule 1.6(d). Minnesota Rules of
Professional Conduct (1993), provides:
(a) Except as stated in paragraph (c), a
lawyer shall not represent a client for,
whatev-