

## **Closing a practice, by the book**

**by**

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An anonymous writer stated, "It takes a minute to say hello but forever to say goodbye." Whether a lawyer has landed her dream legal job, decided she wants to leave the practice of law, or decided to retire and move to paradise, saying goodbye is not quick. The issues around ending a practice can be complicated, especially for those in solo or small practices because there is not a stable of attorneys within the firm to whom active clients can be transferred.

Several of the Minnesota Rules of Professional Conduct (MRPC) are implicated in determining when and how to close down a practice, including but not limited to 1.3 diligence, 1.4 communication and 1.16 withdrawal. The retiring lawyer must figure out what to do with his or her active files, communicate with clients regarding their representation and make sure the clients' interests are protected during any transition.

In planning to leave a practice, there are several options. One option is transferring files to an associate within the firm. Another option is to transfer files to another attorney in the practice area. An attorney could possibly simply withdraw from representation as long as that can be achieved in accord with Rule 1.16. And yet another option is to sell the practice.

If the decided means of closing a practice is through a sale, then Rule 1.17, MRPC, comes into play. First, before entering into negotiations to sell a practice, the lawyer must think about how he or she is going to handle confidentiality concerns. The selling lawyer cannot simply open the files for the potential buyer because pursuant to Rule 1.6 the selling lawyer is still under the obligation to keep confidential all information relating to the representation.

Once the decision to sell has been made, Rule 1.17 sets out the guidelines for selling. Pursuant to this rule, the practice has to be sold in its entirety to a lawyer or lawyers licensed to practice in Minnesota. The rule requires the buying lawyer to take over responsibility for all active files with three exceptions: 1) if a conflict of interest prevents the buying lawyer from handling the files; 2) if the selling lawyer needs permission of the tribunal to withdraw and the tribunal has denied the permission to withdraw; and 3) the buying lawyer is not competent to handle the matters. If the majority of the

selling lawyer's cases fall into one or more of the exceptions, then the proposed buyer may not be an appropriate buyer.

The sale of a practice imposes several obligations on both the buying and selling lawyers. The selling lawyer must send a notice to all active clients regarding the sale of the practice. The notice must advise the client of the sale, the background of the buyer and the opportunity to continue or discontinue representation. Not only must the selling lawyer's notice tell the client who the practice was sold to, but the selling lawyer must also provide a summary regarding the buying lawyer's educational, professional and experiential background. The notice provided by the selling lawyer must also include information advising the client the buying lawyer will represent the client in accord with the fee arrangement the client had with the selling lawyer. Finally, the selling lawyer's notice must inform the clients they can retrieve their file and find another lawyer of their choice.

The selling lawyer may wish to send the required notice by certified mail or have it personally served on the client. By either personally serving or sending by certified mail, the selling lawyer can include a provision asking the client to respond within 90 days of receipt of the notice and advising the client that failure to respond within 90 days will be considered as consent for the file to be turned over to the buying lawyer.

The buying lawyer cannot change the fees charged to a client for at least a year from the date of the sale. If the buying lawyer receives files from the selling lawyer which are being handled on a pro bono basis or for a reduced fee, the selling lawyer is obligated to continue to completion of the matter on those terms.