

# Winding Down Your Practice

by Wendy F. Inge and James M. McCauley

So, you've made the decision to retire from the practice of law. As part of that decision, you will need to have a plan for winding down your practice, especially as a member of a small or solo firm.

What steps should you take? A checklist follows that provides some guidance and direction as to the main issues that need to be addressed. Based on the nature of the practice, planning for winding down a practice should begin twelve to twenty-four months before the retirement date. Organized communication with the clients and the courts pursuant to Virginia Rule 1.4 is critical.

**Building Out a Timeline:** Assessing the Status. Create a detailed list (spread sheet) of all your open files. For each open file, two key questions will help to clarify your next steps:

- What is the current status of this file?
- What type of fee agreement is involved?

Estimate a timeline for finishing the work on each of these open files. Add this to your spread sheet. The aggregation of these timelines will help you to identify the overall timeline that will be needed for closing your practice. You may find that you cannot possibly keep your practice open long enough to complete all of your cases, but you definitely want to finalize as many active files as possible.

Next, decide how to deal with the cases that require special handling, including when and how the files might be transferred to other lawyers in accordance with your jurisdiction's rules. If you have pro bono, reduced fee or special fee arrangement cases that you won't be able to finish, do you know of another qualified attorney who would be willing to do so under the same fee arrangement? Remember that pursuant to Virginia Rule 1.16 you should handle your withdrawal so as not to prejudice

the client. Under these circumstances that means giving the client sufficient notice to hire other competent counsel. Notice should be provided orally and confirmed in writing.

Also, determine whether you need to refund money to any of your clients. In particular, if you are holding an advance and you will be unable to finish work on the matter the funds should be returned to the client. See Virginia Rule 1.16 (d) requiring the lawyer to "return any unearned portion." This information should also be added to your spread sheet.

**Notify Staff:** After sharing your plans and getting input from any partners, you should inform your trusted staff of your retirement. You will need their help in winding down and wrapping up files. But beyond trusted staff, other staff members deserve to know your intentions once you are more certain of your time line. This will allow them to secure other employment as necessary. Give them a date certain if possible and advise them if you are willing to be a reference for them.

**Close Files:** Finalize as many files as possible.

**Curtail Taking of New Matters.**

**Notify Clients:** 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 explain how and where they can pick up copies of their files and should give a time deadline for doing this.

**Notify Court:** For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed.

Where appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and to your client.

**Motion to Withdraw:** For cases before administrative bodies and courts, obtain the client's permission to submit a motion and order to withdraw as attorney of record.

**Substitution of Counsel:** In cases where the client has chosen a new attorney, be certain that a motion for substitution of counsel is filed.

**Double Check:** Pick an appropriate date and check to see if all cases either have a motion and order allowing your withdrawal as counsel or an order permitting substitution of counsel has been entered by the court.

**Preserve Client Files and Copy:** Makes copies of files for clients. Retain your original files. 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. If a client is picking up a file, original documents should be returned to the client and copies should be kept in your file. The file should be kept pursuant to your file retention policy.

**Notify Clients of File Storage**

**Information:** All clients should be told where their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy the files after approximately ten years (note that for some practice areas such as wills and trust and real estate a longer retention period may be advisable.) Follow the ethical guidelines as set out in Virginia LEO 1305. If a

closed file is to be stored by another attorney, get 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. Retain an index that indicates whether the file was transferred and if so to whom, and also where closed files are stored and if/when it was or is destroyed.

## Wrapping Up Client Trust Accounts:

Pursuant to Virginia Rule 1.15, another critical part of closing up a law practice is the need to address all funds held in a client trust account. The first step in doing this is to get your trust account fully reconciled. The funds in the trust account should either correspond to clients for whom work is being completed or be earmarked for refund to the client. Although if you've held a nominal amount of your own money in the account to meet the bank's minimum-balance requirements or cover bank charges for services such as check printing, don't forget about that sum when reconciling the account.

Once the trust account is fully reconciled, you'll prepare and send the final client bills. In accordance with your fee agreement, disburse money owed to you for earned fees and reimbursement for costs advanced. Deposit this money to your general business account. Disburse funds belonging to your client. Or, if the clients are going to new lawyers and their trust account funds are to be transferred to the new firm, then make the check payable to both the client and the new firm.

Next, if you have any unclaimed funds in your trust account, you'll need to determine the source. Payments made on behalf of your clients, such as witness checks not cashed, revert to the clients and should be reimbursed to them. Unclaimed funds belonging to clients may be subject to your state's Disposition of Unclaimed Property Act.

Typically, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds or corresponded about them within five years after the funds are payable. The

attorney faced with a missing client with unclaimed funds in the trust account should "exercise reasonable diligence" in locating that client (LEO 1644). The attorney can deduct the costs of the search from the client's funds, if the costs incurred are reasonable and do not completely deplete the funds as that would defeat the purpose of the search (LEO 1673). However, unlike those costs, the attorney may not deduct a fee for his services in performing the search, nor may he have a client agree in advance that the attorney may keep any unclaimed property. *Id.* When diligent efforts have failed to locate the client, the attorney can follow the Uniform Disposition of Unclaimed Property Act. Va. Code § 55.210.1 *et seq.* The act prescribes that the attorney should consider the funds abandoned five years after the money became distributable. At that point, the attorney can transfer the funds to the commonwealth as outlined in the act. Check with the VSB or ethics counsel for further guidance. Finally, you'll need to notify your bar association when you have closed your trust account.

**Preserving Books and Records:** Virginia Rule 1.15 requires attorneys to keep general and trust account records for at least five full calendar years following the termination of the fiduciary relationship. This information can be preserved in an electronic format. Electronic data from systems like *QuickBooks*® can be more readily preserved on CD-ROM or DVD disk. Just remember to save multiple copies of the backup, and to try to hang on to a disk copy of the software application the data came from. Hanging onto old software may become necessary if you are ever required to view and print accounting data that was burned onto disk years ago.

**General Account Funds:** A firm may continue to operate a general account consisting of firm funds for the purpose of collecting accounts receivable and to continue paying for firm overhead, including lawyers and staff, beyond the

date of the firm closing. But once all transactions are completed it should be closed out.

**Future Contact Information:** 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 call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information.

**Change Bar Membership:** Call the membership department at the Virginia State Bar and update all membership records as to status and contact information.

- **Switching Your Bar Status:** How do I switch to retired status or emeritus status? See VSB Professional Guidelines "Classes of Membership": <http://www.vsb.org/pro-guidelines/index.php/bar-govt/classes-of-membership/>.
- **Disabled and Retirement Status:** To qualify for retired status you must be 70 or must turn 70 within the current fiscal year (July 1–June 30). Please submit a written request or check the box in the status change section on your dues statement marked "retired." To qualify for disabled status you must submit proof of permanent disability. Once your status is changed to retired or disabled you no longer pay dues and are no longer allowed to practice law.
- **Emeritus Members:** Lawyers who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar, become emeritus members and provide *pro bono* legal services to the poor and working poor as emeritus members subject to the terms and conditions stated in this subparagraph. Once your status is changed to emeritus, you no longer pay dues and are no longer allowed to practice law except for "pro bono" work as defined by the VSB Rules.
- **Associate Status:** A lawyer who has been admitted to practice law in

Virginia but who is not presently so engaged and all persons on the law faculties of any law schools of this state that have been approved by the American Bar Association may become associate members of the Virginia State Bar upon application to the secretary and payment of the required dues. Associate members may not practice law.

**Personnel and Office Matters:** There are many more considerations involving personnel and office matters that a firm closing its doors needs to make to ensure a smooth transition. Such matters include cancellation of telephone service, advertising, leased equipment, finding proper storage of employee files, as well as notifying the applicable bar associations, insurance carriers, and any other authority whom the firm may have a duty to report the closing. Redirecting mail and e-mail to the home of the retiring attorney may also help ensure that important client matters that haven't found their way to the successor attorney will receive attention after the firm has officially closed.

### **Malpractice Coverage Considerations:**

Contact your malpractice insurance carrier in advance of your retirement to discuss purchasing an extended reporting period endorsement (ERE, more commonly referred to as a "tail policy"). An ERE is not a new policy. It is an endorsement to the last policy that was in place, which extends the time in which a claim may be reported. Some carrier's ERE allows you to renew annually for as long as you want the endorsement, other carriers may require you to pick the length of time from the outset that you wish to have the ERE. The policy limits are not renewed, the limits remaining under the last policy become the limits for the tail and it is not replenished. It is important to note that under most ERE provisions the purchase of the endorsement is not one of additional coverage or of a separate and distinct policy. This means no coverage will be available for a wrongful act that takes place during the time the ERE is in effect. So if a claim arises several years post retirement out of work done in retirement, for example as a favor for a friend, there would be no coverage for that claim under the ERE.



**Wendy Inge** is the Virginia risk manager for Liability ALPS, the Virginia State Bar-endorsed legal liability insurer. She is available to answer risk management questions at no charge for all members of the VSB. She can be reached at (800) 367-2577.



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## Got an Ethics Question?

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Nonlawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue "E-mail Your Ethics Question" box on the Ethics Questions and Opinions web page at <http://www.vsb.org/site/regulation/ethics/>.