Time to RETIRE?

By MARK A. DUBOIS

If you're old enough to remember the billboards that Cooper Tires used to run with the double-entendre logo "Time to Retire," this article might be for you. The most recent demographic profile of the bar I saw indicated that our median age was moving well into the 60s. There are many of us who have been practicing for 50 or more years that haven't given enough thought to the surprisingly time-consuming process of untangling our professional obligations and closing our offices or practices.

The commentary to Rule 1.3 of the Rules of Professional Conduct provides that lawyers in solo or small firm environments should "prepare a plan" and designate someone to wrap up their files and protect the clients' interests in cases of death or disability. It's a rule honored more in the breach than the observance, but it's a good idea. Not only is it an ethical obligation to make sure that our clients don't suffer if we can't finish their matters, but I'd argue that we have a moral duty to take care of our families, staff and others who depend on the continued operation of our offices if we can't do so. We call it succession planning.

A decade ago, when Kim Knox was CBA president, she asked me to put together a handbook on the process of designating a practice successor and selling or closing down a law office. I compiled some great materials other states had put together what we called "The Path Out." You can read it at ctbar.org/PathOutGuide. It contains simple forms and checklists that you can use to designate a practice successor, powers of attorney and other documents that can be used to continue and wind up the business and forms to use to sell a practice. I've given many, many copies of it out, and the universal response has been that while it doesn't answer every question or issue, it certainly beats learning all of this for the first time.

Once you have taken the step of deciding that it's time to address this topic, and you've gotten at least so far as to designate a successor in case you don't live to see the process to the end, the question then presented is whether you want to sell your practice or just wind it up. Rule 1.17 of the Rules of Professional Conduct allows lawyers to sell either their whole practice or a portion of it, the real estate closing or the personal injury part for instance. Many are surprised to find that there's real value in trade names, websites, client lists, ongoing work, proprietary forms, and intellectual property that have been developed over the years.

Law businesses can be sold outright, or they can be merged with other firms which can continue to use the departing lawyer's name as part of the firm name because the new entity is a successor firm. Sales can be structured as asset purchases or outright sales. Payments can be arranged to cover a period of years depending on retained business or other factors. A retiring lawyer can remain "of counsel" to a successor or acquiring firm and practice as much or as little as they wish. Some larger firms offer retiring lawyers a platform where they can continue to practice without all the worries of hiring personnel and maintaining hardware and software. The CBA has offered a number of seminars in the past on these topics, which you can explore at ctbar.org/EducationPortal.

If a sale or merger isn't right, a retiring lawyer might simply determine to wind up their practice. Surprisingly, this isn't something that happens quickly. My best estimate is that it takes 10 years to completely close a law office. Rule 1.15(j) requires that certain records be kept for seven years. Malpractice cases have a 3-year statute of repose, but that can be continued by concealment or other bad acts. Grievances have a 6-year statute of limitations, but there are exceptions there too. You might keep those limitations in mind when you head to the shredder with your

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old files. A careful lawyer will arrange for adequate insurance. What we used to call "tail coverage" is now an extended claims reporting period on our claims made policies. Your insurance agent can help you.

IOLTA accounts must be reconciled, and surplus finds either returned to clients or escheated to the State. Original documents, such as executed wills, must be returned to clients. I've heard of horror stories of firms with hundreds or thousands of old wills in their safes with no idea of how to contact the testators or beneficiaries. While many law firms now maintain virtual files, for most of us the "old file room," in a basement, storage facility, or barn (I've seen them all) is a place of both memories and dread. While best practices now require that a lawyer address file retention, surrender and destruction in their retainer letters, my guess is that for many of my generation there's nothing addressing this. Can you imagine the work involved with sending a letter to all your former clients that you're going to destroy their files if they're not picked up by a certain date?

Finally, the retiring lawyer should decide whether to keep their license active or filing a revocable retirement under Practice Book 2-55 or a permanent retirement under Practice Book 2-55A. If there's a possibility of a future stream of referral income, ethics rules don't allow us to share fees with non-lawyers, and that includes those who have surrendered their licenses, unless the payment is for work done prior to retirement. If you want to keep open the possibility that you can refer new matters, best to consider the cost of keeping your license active or reactivating a license temporarily suspended every time you get a new matter.

I've covered a lot in this article, and there's much much to this topic that I can't address in the space we have here. Hopefully I've given you enough to head you in the right direction. It can be time-consuming and complex. But, unlike fine wine, the process and problems of closing a practice don't get better with time. ■

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