

THINGS TO CONSIDER BEFORE CLOSING YOUR SOLO PRACTICE

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Although the ABA Model Rules of Professional Conduct and the ethics rules of several states now allow the sale of a law practice, the Alabama Rules of Professional Conduct do not. This means that members of small and large firms can accumulate some degree of “going concern” value in their practices while solo practitioners cannot.

Until there is a movement to change the rules to allow the sale of a practice in Alabama, solo practitioners who anticipate closing their offices may wish to consider taking on another reliable solo practitioner as a partner, or otherwise joining a small firm which can then ethically purchase their interest in the practice.

If you are unable to find a suitable partner to whom you can transfer your practice over a reasonable period of time, and you wish to close your practice before you believe all of your open cases can be completed, then you may consider referring the ongoing cases to one or more other lawyers. This will enable you to receive a fee for your investment in the case and is ethically permissible provided the client consents and you otherwise act in a manner which is consistent with the rule.

Because the choice of lawyer is ultimate that of the client, you cannot “transfer” clients to another lawyer or firm but, subject to the client’s consent, you may attempt to make an orderly transition by lining up suitable counsel to continue the representation. If you do not already have permission to associate other lawyers in your fee agreement, seek the client’s permission before revealing confidential information about the case to other potential counsel. It goes without saying that any withdrawal from representation must be made in accordance with the applicable court rules and cannot prejudice the client.

Rule 1.5(e) of the Alabama Rules of Professional Conduct provides that you may divide a fee with a lawyer who is not a member of your firm only if:

1. Either
 - a) the division is in proportion to the services provided by each lawyer; or
 - b) by written agreement with the client each lawyer assumes joint responsibility for the representation; or
 - c) in a contingency case the division is between the referring or forwarding lawyer and the receiving lawyer;
2. The client is advised of and does not object to the participation of all the lawyers involved;

3. The client is advised that the division of fees will occur; and
4. The total fee is not clearly excessive.

If you can't find another lawyer with whom to partner or make arrangements to associate appropriate counsel, you may withdraw from a case provided you can do so without material adverse affect on the interests of the client. Review Rule 1.16 of the Alabama Rules of Professional Conduct carefully. If you cannot withdraw without material adverse affect on the interests of the client, unless other appropriate grounds for withdrawal exist you must see the case through to the end. Failure to do so may subject you to sanctions for abandoning the client. If you have accepted cases which are now very near the statute of limitations, you may be obligated to file suit as failure to do so, obviously, may adversely affect the client. Once the suit is filed, you may attempt to associate other counsel but if you can't, you will have to see the case through unless other appropriate grounds for withdrawal exist or arise thereafter.

Regardless of how you end representation in each case, you should make sure that the file adequately documents what has been done. In the event you have taken in a partner or associated counsel, make sure he or she files a notice of appearance and you file a notice of withdrawal. You should have an order from the court approving your withdrawal in all pending cases, so it's a good idea to prepare an appropriate order and send it with your notice, making it easier for the judge to promptly take the necessary action. Always diary these for follow-up to make sure that the order gets signed. Whether or not the case has been filed, you should have a signed document in the file indicating the client has been informed and has agreed to the change of counsel, any fee division, and your withdrawal.

The following are some, but not all of, the steps you will need to take to close your practice:

1. Consult with your tax advisor to discuss your plans and develop a strategy which will minimize your taxes in the event that you transfer assets to another lawyer or firm.
2. Once you have formed your plan and know your timeline, discuss your plans with your staff so that they will know what to expect. The more you can tell them about how much longer you will need their services and whether you can offer them a severance package and otherwise assist them in finding other jobs, the more likely they will be to stick with you to the end if you need them.
3. Review your lease and take the steps necessary to terminate it early, if allowed.
4. Review all equipment leases and take the steps necessary to terminate them early, if allowed.

5. Check the status of all quarterly, withholding, or other tax payments due, and make any unpaid payments.
6. Review all your files and immediately return any retained original documents or physical property of the client such as wills, deeds, contracts, or physical evidence. Return each such item immediately, and document the file that you have done so.
7. Perform a complete audit of your trust account and return all client or third party funds to the appropriate person or entity. This includes resolving any outstanding, uncleared checks.
8. Send a letter to all former clients telling them that you are closing your practice, informing them how they can contact you in the future, and offering their files to them. Give them a specific method to obtain the file and a time by which to do so, and notify them that if they fail to obtain their file that it will be destroyed in accordance with your file destruction procedure. Let them know how much longer you will retain the file if they fail to pick it up, and tell them that it will be destroyed after that date. (See *Guidelines for Closing and Purging Files* if you do not already have a procedure in place.)
9. Send a letter to the judges and clerks in the counties in which you practice, notifying them that you are closing your practice. If you are on any appointment lists, ask that your name be removed or, if you will continue to accept occasional *pro bono* cases, let them know that.
10. Diary your calendar to file all end of the year reports such as 1099 filings, tax returns, etc.
11. Send letters to all vendors with whom you have done business, canceling all subscriptions. Pay your account in full at this time, if possible, and specifically notify them not to send you any further updates, books, or supplies.
12. Review your malpractice policy and contact your malpractice carrier to determine whether you need "tail" coverage. Purchase any necessary coverage.
13. File the appropriate forwarding instructions with the Post Office to make sure that mail sent to your office address is forwarded to your post office box or, if you don't have one, to your home address. Forwarding orders are good for six months, so diary the expiration date and make sure that you renew the forwarding order for an additional six months. If you have an office post office box, plan to keep it for at least one year after you close your practice.

14. If the service is available in your area, when you cancel your phone service reserve your telephone number and have it directed to a voice mail box. This is much cheaper than the monthly rate for a business line, and will allow you to retrieve your messages and return phone calls. Plan to keep this service for at least a year after you close your practice. If this service is not available, try to have your calls directed to another number or consider retaining one line with an answering machine or voicemail service for six months after you close the practice. Another option is to port your office number to Google Voice, a free service from Google that can redirect calls made to your old number to all your other lines without revealing those numbers to your callers. Free voicemail and voicemail to email are included. See <http://www.google.com/googlevoice/about.html> for more information and to create an account.
15. Make up cards with your name, forwarding address and phone number and leave them with your office neighbors and, if possible, the new tenants of your space so that they can help former clients find you if necessary.
16. Consider giving any office furnishings or equipment which you cannot sell to charity and take a deduction. Remember that confidentiality must be maintained at all times, so consider removing hard drives from computers if you are not confident that all client information has been deleted and cannot be recovered.
17. At the end of the fiscal year when you receive your municipal business license renewal form notify the licensing authority of the date on which you closed your practice.
18. Notify all professional organizations and associations of which you are a member of the closing of your office and your new address.
19. Notify the Alabama State Bar and the Administrative Office of Courts of the closing of your practice and of your new address, and diary your calendar to file your CLE report for your final year of practice. This report must be filed by January 31 of each year if you held a regular license to practice at any time between October 1st and December 31st of the previous year and were not a new admittee or otherwise exempt from mandatory continuing legal education.
20. When time comes for your license renewal, if you do not wish to renew as a Special Member, notify the State Bar in writing that you wish to be voluntarily inactive so that you will not be classified as "not in good standing" due to non-payment of dues. Maintaining a special membership is a good idea if you think you might ever wish to practice law in Alabama again. At the present time there are no remedial CLE or testing requirements to re-activate your license, but that could change at any time.