

# **GUIDELINES FOR CLOSING A LAW PRACTICE**

## **Why is closing down a law practice any different from closing down any other business?**

The major difference is the ethical considerations superimposed on the task. Most of the ethical conditions are designed to either protect the confidentiality of client information (HRPC 1.6) and/or to prevent other lawyers from offering to help the clients because of solicitation concerns (HRPC 7.3). In addition, counsel should be on the lookout for potential conflicts of interest (HRPC 1.7 and HRPC 1.9), and client trust accounting (HRPC 1.15) and Rule 4 of the Rules Governing Trust Accounting (“RGTA”) issues.

These are general guidelines for attorneys, who may have volunteered to close another attorney’s office or have been designated successor counsel, as well as non-lawyers who are assisting in the closing of a law practice.

This information should not be construed as legal advice. If you need legal advice, you should consult with an attorney.

## **Where to begin?**

### **1. Personal Representative, or Other Designee**

Check with the attorney’s spouse, or the appropriate designee, such as a Personal Representative of the Estate, to obtain their consent to handle the closure of the law office.

### **2. Getting Assistance**

Contact the current or most recent staff to arrange for their employment, (if available) on a full, part-time or temporary basis, to help in the closing-down process.

### **3. Bar Association Notifications**

Make appropriate notifications to the Hawai’i State Bar Association, and any other bar associations, professional associations and other organizations to which the attorney belonged. In addition to ending dues billing, the organization may wish to notify others of the death of the member.

4. Successor Counsel

Determine if attorney had an arrangement with another attorney (sometimes called a successor counsel) who previously agreed to assume practice of a deceased or disabled attorney.

5. RSCH 2.20 Trusteeship

Contact the Office of Disciplinary Counsel to inform them of the death or disability of the attorney to assist you in petitioning the Hawai'i Supreme Court to be appointed a Trustee for the handling of return of client files and funds. RSCH provides that Trustees and assistants appointed pursuant to RSCH 2.20 shall be immune from suit and liability for any conduct in the course of their official duties.

**How to handle closing of the law practice.**

1. Locating and Securing All Physical Premises

Get a set of keys to the premises and to interior locked file cabinets and offices. If there is a safe, try to locate the combination. Make sure to check for "satellite" offices. Ask the landlord for help. Ask the most recent employee for help. Change the locks and combinations to protect the office files and assets.

2. Mail

Open all mail as it arrives to look for information on pending client matters, bills that have to be paid, tax returns that have to be filed, income that may come in, etc.

- a. For closed offices, notify post office, building management and some nearby offices. Post office forwarding will prevent mail from being delivered and left at an empty office. Request building management and a nearby office to collect mail, express deliveries and anything else that might be important.
- b. Examine incoming mail to determine what subscriptions must be canceled. Newsletters, magazines, lawyer listings, legal supplements, yellow pages, web and Internet services, etc. must be canceled.

3. Lease

Arrange with the landlord or other entity for both a cancellation of the old lease or tenancy arrangement and the creation of a new arrangement.

4. Insurance

If there is a known CPA or bookkeeper or file system, try to locate all existing insurance policies, including malpractice, workers' compensation, medical, life, general liability, etc.

- a. Arrange with the insurance agents or companies involved for a termination of the policies or the issuance of new policies to protect the person(s) or entities closing down the practice.
- b. Determine if a "tail" malpractice policy can be obtained to protect the lawyer's estate.
- c. Contact the E & O carrier to determine who the deceased or disabled attorney had named as Successor Counsel.

5. Bank Accounts

Look for checkbooks, canceled checks, bank statements and incoming mail for information on the existence of checking accounts, savings accounts and safe deposit boxes. Notify banks. Determine whether old accounts must be closed and new accounts opened.

6. Credit Card and Check Authorizations and Periodic Charges

Many publications and memberships continue unless canceled. Monthly or other periodic charges might automatically be made to a credit card or by charges to a bank account. These must be canceled.

7. Tax Returns

Determine which "final" and new tax returns must be filed. Consider federal, state and local payroll, occupancy and sales taxes. Identify federal and state Employer Identification Numbers.

8. Website

You might consider placing appropriate notifications on the attorney's Website.

9. Voicemail

If you can obtain passwords, clear all voicemails that may contain client or other important communications. If passwords are not available disconnect all voicemails for which there is no password and consider using a simple answering machine instead. If the equipment permits, have voicemail forwarded to your phone.

10. E-Mails

Arrange for automatic forwarding of all e-mails to a mailbox of the responsible person. It is also possible to reject or answer all e-mails with a notice instructing the sender whom to contact.

11. Computers

Take possession and protect all computers. Get technical assistance if necessary to make a back-up disk or tape in the event something happens to the computer(s). Check to see if there are back-up tapes or discs and where they would be located. Take possession of them.

12. Other Office Equipment

With rare exceptions, used law office equipment has relatively little value. You might consider offering the equipment, except computers, to the staff and give the balance to a charity that will haul it away.

13. Business Bank Account

Inform the bank that the account should be frozen until it can be determined who can sign checks or otherwise handle the business's remaining financial affairs, such as a Personal Representative, spouse, etc.

14. Non-client records

Books of account, bank statements, paid bills, etc., can usually be destroyed after the necessary time for income tax or malpractice or other laws.

### **What about client matters?**

#### 1. Open Matters

- a. If possible, run a computer search to determine if the attorney is attorney of record on any open matters.
- b. If you are an attorney in ongoing matters, be on the look-out for potential conflicts of interest(s) that you may encounter in reviewing a list of open cases.
- c. Examine all incoming mail to determine open client matters.

#### 2. Successor Attorney

- a. Be especially alert for documents indicating the possible existence of a successor counsel.
- b. Check with a surviving spouse or office staff to determine if the attorney had a close friend who may agree to become a successor counsel or RSCH 2.20 Trustee.

#### 3. Public Notice

Ask local bar association(s) to send e-mail alerts to members and place a public notice in bar publications announcing death or disability of attorney to clients. The notices should ask information as to any successor counsel or attorneys with client matters with the deceased or disabled attorney.

#### 4. Calendars

Look for desk calendars, computer calendars and secretarial calendars to seek information on cases in process and due dates.

#### 5. Client Lists

Check the computer and administrative files for lists of clients. Determine if the lists are divided into active files and closed files.

#### 6. Location of Client Files

Closed files may be kept in more than one location. Closed files may be stored in public warehouses, the attorney's garage or basement, or in the attorney's home or even with a client. All staff and family members should be quizzed to determine if they

know of out-of-office locations. Many lawyers simply dump the files into boxes with the file names on the outside of the box. The boxes containing the files are then stored in a garage or basement with the hope that the files will never be requested. This system seems to work although it would still seem necessary to remove original client documents from files before doing so.

7. Notification to Clients

Clients need to be notified by letter or public notice, such as an advertisement in a newspaper of general circulation, to retrieve their files.

8. Review of Files

Closed files must be examined before destruction or returned to clients.

- a. Anything in the closed file that is the property of the client should be returned to the client. Any original document should be removed from the file for return to the client. Typical items found in files include wills, stock certificates, original signed contracts, promissory notes, deeds, mortgages and other items returned to the attorney's office from a county recorder or governmental filing office.
- b. Determine if there is a provision concerning destruction of files in the fee agreement or on closing the file at any time noted in the file. Determine if the attorney had a file-retention/destruction policy that had been communicated to the clients. There may be special rules for the files of minors.

9. Client Trust Account

Inform the bank that the client trust account should also be frozen until it can be determined who can sign checks or otherwise handle the business's remaining financial affairs, such as a Trustee, Personal Representative, spouse, etc.

- a. Determine if a non-lawyer can audit the account under an attorney's guidance and direction.
- b. Give a sense of urgency to determining which clients are entitled to the money and make distribution to the clients as rapidly as possible.
- c. If you have been appointed as the RSCH 2.20 Trustee, get the Supreme Court's approval for disbursements.

10. Successor Counsel for Clients

If the client has selected successor counsel, immediately make arrangements for successor lawyer or firm, notify all courts, agencies, opposing counsel, etc., of the change in representation by appropriate substitution or other communications.

- a. Have the client and/or successor counsel provide to you, in writing, the request to provide the file to new counsel.
- b. If arrangements for a successor lawyer or firm have not been made, it may be necessary to retain counsel to file an appropriate document or letter to the court to prevent a default proceeding or to otherwise protect the client.
- c. Keep a list of disbursements of client files, including the name of the file (and any numbered volumes of files), box number of stored files, and any other property accompanying the files.
- d. Require picture identification of the client and a written receipt from the client collecting the file.
- e. Delivering an active file to a client or attorney may be necessary to protect the client's interests. Some consideration must be given to photocopying what is given for malpractice protection.
- f. Any misfiled papers relative to other clients must be identified and removed before returning the file to the requesting client. A receipt for the file must be obtained.

11. Client E-mails

If a database of client e-mails is available, consider notifying clients and others by e-mail notifications. Bad e-mail addresses can be quickly spotted. It may be possible to program e-mails to be notified when the e-mail has been read.

12. Eventual Destruction of Client Files

The safest way to destroy closed files is simply to shred them or get them shredded. Unfortunately this can be an expensive process. Often lawyers just dump closed files into the trash. This is a risky procedure as many people handle the trash before it is destroyed and the file contents may be of interest to one or more of these people. Take precautions to make sure no client confidences would be violated.

13. Unlocated Clients

Files of unlocated clients pose a special problem. If the applicable statutes of limitations have run and no one has responded to notices, the files probably can be destroyed. Contact the Office of Disciplinary Counsel regarding possible storage of uncollected files.