



Professional Liability Fund present

Nuts-and-Bolts Issues for Smoothly Closing Your Law Practice

Wednesday, February 5, 2020

1 Oregon Practice and Procedure/Practical Skills
MCLE Credits

Sheila M. Blackford
PLF Practice Management Attorney

www.osbplf.org

503-639-6911

1-800-452-1639

OSB Center
Tigard, Oregon

© 2020 Oregon State Bar Professional Liability Fund, all rights reserved. The information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund. This information does not establish, report, or create the standard of care for attorneys in Oregon. Readers should conduct their own appropriate legal research.

MCLE FORM 1: Recordkeeping Form (Do Not Return This Form to the Bar)

Instructions:

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in **accredited** CLE activities. You may wish to use this form to record your CLE activities, attaching it to a copy of the program brochure or other information regarding the CLE activity.

Do not return this form to the Oregon State Bar. This is to be retained in your own MCLE file.

Name:		Bar Number:	
Sponsor of CLE Activity: OSB Professional Liability Fund			
Title of CLE Activity: Nuts-and-Bolts Issues for Smoothly Closing Your Law Practice		Program Number: 64864	
Date: 2/5/2020	Location: OSB Center, Tigard, Oregon		
<input checked="" type="checkbox"/> <i>Activity has been accredited by the Oregon State Bar for the following credit:</i> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Abuse Reporting <u>1</u> Practical Skills Oregon Practice and Procedure ___ Pers. Mgmt/Bus. Dev.*	<input type="checkbox"/> Full Credit. <i>I attended the entire program and the total of authorized credits are:</i> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Abuse Reporting ___ Practical Skills ___ Pers. Mgmt/Bus. Dev.*	<input type="checkbox"/> Partial Credit. <i>I attended _____ hours of the program and am entitled to the following credits*:</i> ___ General ___ Prof Resp-Ethics ___ Access to Justice ___ Abuse Reporting ___ Practical Skills ___ Pers. Mgmt/Bus. Dev.*	

***Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration, introductions, business meetings and programs less than 30 minutes. MCLE credits may not be claimed for any activity that has not been accredited by the MCLE Administrator. If the program has not been accredited by the MCLE Administrator, you must submit a Group CLE Activity Accreditation application (See MCLE Form 2.)

Caveat:

If the actual program length is less than the credit hours approved, Bar members are responsible for making the appropriate adjustments in their compliance reports. Adjustments must also be made for late arrival, early departure or other periods of absence or non-participation.

*Personal Management Assistance/Business Development. See MCLE Rule 5.12 and Regulation 5.300 for additional information regarding Category III activities. Maximum credit that may be claimed for Category III activities is 6.0 in a three-year reporting period and 3.0 in a short reporting period.

About Our Speaker

Sheila Blackford received her BA from Mills College and her JD with Tax Law Concentration from University of the Pacific, McGeorge School of Law. A member of the Oregon State Bar since 2000, she is the former Editor-in-Chief of Law Practice, the magazine published by the American Bar Association Law Practice Management Division. She is a Fellow of the American Bar Foundation, a member of the ABA Women Rainmaker's and of the ABA Law Practice Division Publications Board. She is a member of the OSB Public Service Advisory Committee.

Ms. Blackford has been a Practice Management Advisor for the Oregon State Bar Professional Liability Fund since 2005. She has been an adjunct professor of Law Practice Management at Lewis & Clark Law School and at the School of Law at University of Oregon. A former sole practitioner, she provides confidential practice management assistance to Oregon attorneys to reduce their risk of malpractice claims and ethics complaints. Besides her legal experience, she has over 10 years of teaching and marketing experience.

She is the author of Trust Accounting in One Hour for Lawyers, the co-author of Paperless in One Hour for Lawyers, and a contributing author to the Flying Solo, 5th Edition all published by the ABA Law Practice Management Division. She is also a contributing author to the Fee Agreement Compendium published by the Oregon State Bar and to the law practice management handbooks published by the PLF. Her articles frequently appear in legal publications, including the Oregon State Bar Bulletin, In Brief, Law Practice Magazine and Law Practice TODAY, and LTN Law Technology News. She is a frequent speaker about practice management for law-related organizations, including the Professional Liability Fund, the Oregon State Bar, the American Bar Association, the American Law Institute and the Upper Law Society of Canada. In addition to her own blog Just Oregon Lawyers and twitter feed @sheilablackford, she writes for the PLF's [inPractice](#) blog and tweets technology and practice management tips on the PLF [Twitter](#) feed.

Nuts-and-Bolts Issues for Smoothly Closing Your Law Practice

TABLE OF CONTENTS


POWERPOINT SLIDES	1
PLF PRACTICE AIDS	8
Checklist for Lawyers Planning to Retire	8
Checklist for Closing Your Own Office	11
Checklist for Selling Your Law Practice	13
A Better Way to Store Your Closed Files, <i>inPractice</i> blog	17
More Than One Way Out	19
Oregon Rules of Professional Conduct	28
Resources for Attorneys Closing Their Offices	33
Resources for Lawyers Planning to Retire	35
Resources for Selling Your Law Practice	39
Succession Planning: Developing a Reasonable Timeline and Identifying a Successor Attorney, <i>inPractice</i> blog	43
The Of Counsel Relationship, <i>inBrief</i>	45
Unwanted Data: How to Properly Destroy Data in Hardware, <i>inBrief</i>	47

2/5/2020


Nuts-and-Bolts Issues
for Smoothly Closing
Your Law Practice

Do you have an Exit Strategy?

Sheila M. Blackford
Practice Management Attorney
OSB Professional Liability Fund




2/5/2020




“Retiring from your law practice is a lot like juggling—
difficult but doable.”

2/5/2020

Chart out your route well in advance.



2/5/2020



Well before you leap to tell the world your intentions, stop
and think about all the other steps that will need to be
taken ahead of that one.

2/5/2020

FIRST THINGS FIRST FOR TODAY

1. REVIEW ETHICAL OBLIGATIONS
2. CONSIDER CLIENTS FIRST
3. GATHER INFORMATION
4. WEIGH OPTIONS
5. CREATE TIMELINES
6. PLAN COMMUNICATION
7. WRAP UP TRUST ACCOUNT
8. RESOURCES

2/5/2020

Understand your
obligations under the
Oregon Rules of
Professional
Conduct



Get help from the OSB Ethics Counsel

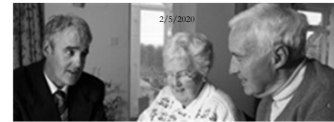
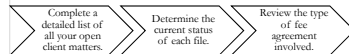
Call Legal Ethics Helpline: 503-431-6475

Rule 1.3 Diligence	Rule 1.4 Communication
Rule 1.6 Confidentiality	Rule 1.15-1 Safekeeping Property
Rule 1.16 Terminating Representation	Rule 1.17 Sale of Law Practice
Rule 5.4 Professional Independence of a Lawyer	Rule 5.6 Restrictions on Right to Practice

YOUR
CLIENT'S
NEEDS
COME FIRST



Build a reasonable timeline for finishing up your client matters



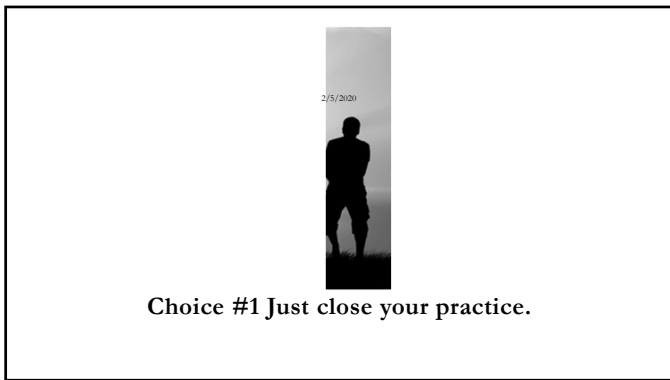
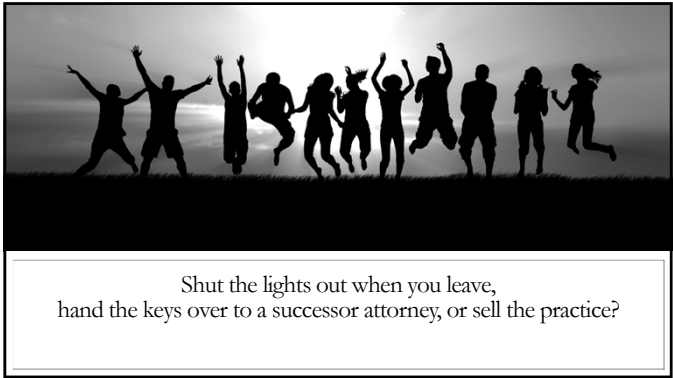
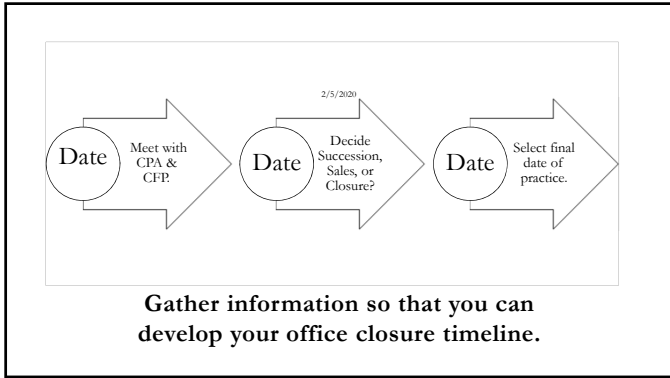
Be sensitive to your client's concerns.



Finish the client matters you agreed to do.

Assist your clients with transferring their client matter to a new attorney.





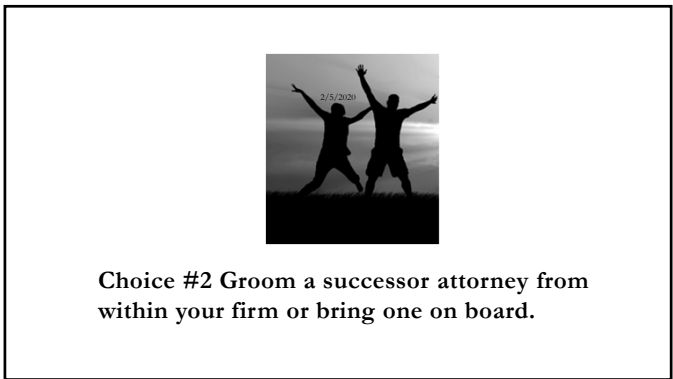
CLOSING

1. Assess
2. Notify
3. Discuss
4. Finish
5. Bill
6. Refund
7. Close
8. Status
9. Coverage
10. Storage

CLOSING

See the PLF practice aid topics: Closing a Law Office; Retiring from Law Practice; Trust Accounting; File Management


1. Checklist for Closing Your Own Office
2. Letters for Closing Your Law Office
3. Authorization for Transfer of Client File – *if unable to finish matter.*
4. Acknowledgment of Receipt of File
5. Resources for Lawyers Closing their Offices
6. Checklist for Lawyers Planning to Retire
7. Resources for Lawyers Planning to Retire
8. Closing Your IOLTA Account
9. File Retention and Destruction Guidelines



SUCCESSOR

2/5/2020

1. Identify
2. Select
3. Discuss
4. Introduce
5. Shadow
6. Monitor
7. Test
8. Transition
9. Announce
10. Storage




SUCCESSOR

2/5/2020

See the PLF practice aid topics: Retiring from Law Practice; Trust Accounting; File Management

1. Checklist for Lawyers Planning to Retire
2. Resources for Lawyers Planning to Retire
3. Closing Your IOLTA Account
4. File Retention and Destruction Guidelines



Choice #3 Sell the practice.

SELLING


2/5/2020

See the PLF practice aid topics: Selling a Law Practice; Trust Accounting; File Management

1. Checklist for Selling Your Law Practice
2. Resources for Selling Your Law Practice
5. Closing Your IOLTA Account
6. File Retention and Destruction Guidelines

IF SELLING


2/5/2020



While the valuation and negotiation processes can be complex, the three paramount issues are:
 (1) price, (2) payout and (3) workout.

SELLING

2/5/2020



1. Seek Advice
2. Read ORPC 1.17 Locate Buyer
3. Advertise Practice for Sale
4. Review Potential Buyers
5. Due Diligence
6. Non Disclosure Agreement
7. Discuss Terms
8. Call Clients
9. ORPC 1.17 Notice Formalities
10. Announce

2/5/2020

Answer their big questions

"When will you begin winding down your practice?"
"Will I have job security until you retire?"
"Do you know any other lawyers who may want to hire me?"

2/5/2020

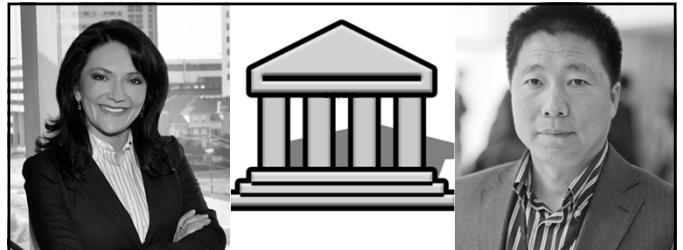


Think carefully about how and when you will describe your plans to your clients.

2/5/2020

Answer their big questions

"Will you be able to finish helping me?"
"What happens if my case isn't finished by then?"
"Do you know another lawyer who can help me after you retire?"



Remember your fiduciary duty: Wrapping up your lawyer trust account.

2/5/2020

Answer these big questions

"Have you gotten your trust account fully reconciled?"
"Do all funds in your trust account correspond to clients?"
"Are these funds allocated for work in progress or are they earmarked for refund to the client?"


2/5/2020



Prepare and send the final client bills showing disbursements for earned fees and reimbursement for costs advanced.

2/5/2020

If you have unclaimed trust account funds belonging to a client whose last known address was in Oregon, follow the procedures in the Disposition of Unclaimed Property Act, ORS 98.302-98.436.
See the Oregon State Bar website "Unclaimed Client Funds."



2/5/2020

The big question:
"Who can help me with all these questions?"

2/5/2020

Answer:
"The PLF Practice Management Attorneys!"

RESOURCES:
PLF Practice Aids

2/5/2020
www.osbplf.org PRACTICE MANAGEMENT menu tab,
select FORMS on drop down menu
Then select practice aid category desired:

Closing a Law Office: Resources for Lawyers Closing Their Offices
Retiring From Law Practice: Resources for Lawyers Planning to Retire
Selling a Law Practice: Resources for Selling Your Law Practice



Celebrate!

CHECKLIST FOR LAWYERS PLANNING TO RETIRE

1. If you are a sole practitioner or head of a small firm with a number of associates working for you, decide whether you wish to sell all or part of your law practice, including goodwill.
2. If you wish to sell your practice, review ORPC 1.17, ORPC 1.5(e), and ORPC 1.6(b)(6). See the Professional Liability Fund (PLF) practice aid, *Checklist for Lawyers Planning to Sell Their Law Practices*.
3. Decide when you would like to retire and create a timeline for your plan.
4. Review all active client files.
 - a. Do you intend to finish all open matters, and will you be able to do so prior to retirement?
 - b. Do your files contain original documents, photographs, tapes, discs or other property provided to you by clients? Return these items to clients and make copies for your records. Property belonging to the client, including original client documents, cannot be destroyed.
 - c. Do you have original wills? If you keep original wills, 40 years must elapse before the will can be disposed of. ORS 112.815 provides: "An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if: (1) The attorney is licensed to practice law in the state of Oregon; (2) At least 40 years has elapsed since execution of the will; (3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and (4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise."
5. Notify current clients of your impending retirement. Advise clients to obtain a new attorney if they will need further legal services after your retirement date. Clients may be referred to other practitioners or the Oregon State Bar (OSB) Lawyer Referral Service, 503-684-3763 or 1-800-452-7636.
6. For cases with pending court dates, depositions, or hearings:
 - a. Discuss with clients how to proceed. When appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmation of these extensions, continuances, and resets to opposing counsel and your client. Ideally, these matters should be concluded prior to your retirement date.
 - b. Obtain client permission to submit a motion and order to withdraw as attorney of record. Review ORPC 1.16.
 - c. If the client is obtaining a new attorney, be certain a Substitution of Attorney is filed.
 - d. Pick an appropriate date to confirm whether all cases either have a motion and order allowing your withdrawal as attorney of record, or have a Substitution of Attorney filed with the court.

CHECKLIST FOR LAWYERS PLANNING TO RETIRE

7. Make copies of files for clients who need further legal services after your retirement. Retain your original files. All clients should either pick up their files and sign a receipt acknowledging they received the files, or sign an authorization for you to release the files to their new attorneys. Sample receipts and authorizations are available on the PLF website, www.osbplf.org.
8. Wrap up the business and financial affairs of your practice. Prepare final billing statements showing any outstanding fees due and/or money in trust. Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. All accounts should be fully reconciled before they are closed. See the PLF practice aid, *Closing Your IOLTA Account*, available on the PLF website, www.osbplf.org.
9. The PLF recommends that closed files be kept for 10 years or longer. Obtain all clients' permission to destroy the files after approximately 10 years. If property and documents belonging to the client have been returned (see step 4 above), files may be stored electronically. If you are storing client files or data in the cloud, make arrangements to maintain your cloud-based storage for 10 years or longer. For more information about storage of paper-based and electronic files, see the File Management and Paperless Office and Cloud Computing practice aids available on the PLF website, www.osbplf.org.
10. Tell all clients where their closed files will be stored and whom they should contact to retrieve them. If closed files will be stored by another attorney, get the clients' permission to allow the attorney to store the files for you and provide your clients with the attorney's name, address, and telephone number.
11. If someone else will be storing your closed files, notify OSB Regulatory Services of the location. See the PLF practice aid, *Resources for Lawyers Planning to Retire*, available on the PLF website, www.osbplf.org.
12. File an exemption with the PLF. See the PLF practice aid, *Resources for Lawyers Planning to Retire*, available on the PLF website, www.osbplf.org.
13. Contact the PLF for information about "tail" or Extended Reporting Coverage (ERC). There is no cost for ERC under PLF Claims Made Plans for 1996 and later years. If you have excess coverage, contact the PLF or your excess carrier about purchasing excess ERC.
14. If desired, change your membership status with the OSB. See the PLF practice aid, *Resources for Lawyers Planning to Retire*, available on the PLF website, www.osbplf.org.
15. If you are a sole practitioner, maintain your telephone number for 30-60 days after your office is closed. Record an appropriate outgoing message announcing your retirement and office closure. Remind clients whom they can contact to obtain their files. (See step 10 above.) If you choose to disconnect your number, consider asking the telephone company for a new phone number to be given out when your disconnected phone number is called. This eliminates the problem created when clients call your old number, get a recording stating that your telephone is disconnected, and do not know where else to turn for information.

CHECKLIST FOR LAWYERS PLANNING TO RETIRE

16. If desired, submit a notice of your retirement to the *Oregon State Bar Bulletin*, local bar association, local newspaper, or law school.

Call the PLF's Practice Management Advisors at 503-639-6911 or 800-452-1639 for assistance or answers to any questions.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2019 OSB Professional Liability Fund.

CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. Finalize as many active files as possible.
2. 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 timeframes 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. (See sample *Letter Advising That Lawyer Is Closing His/Her Office*, available on the PLF website, www.osbplf.org. Select Practice Management > Forms > Closing Your Law Office > Letter for Closing Your Law Office.)
3. For cases with pending court dates, depositions, or hearings, discuss with the clients how to proceed. When appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and your client.
4. For cases before administrative bodies and courts, obtain the clients' permission to submit a motion and order to withdraw as attorney of record. Review ORPC 1.16.
5. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
6. Pick an appropriate date to check whether all cases either have a motion and order allowing your withdrawal as attorney of record or have a Substitution of Attorney filed with the court.
7. Make copies of files for clients with open matters. Retain your original files. All clients should either pick up the copy of 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. (Sample *Acknowledgment of Receipt of File and Authorization for Transfer of Client File* available at www.osbplf.org. Select Practice Management > Forms > Closing Your Law Office.) If a client is picking up the file, return original documents to the client and keep copies in your file.
8. Remind clients of your file retention and destruction policy. Tell them where you will be storing your client file records and who they can contact should they need an additional copy of their file. If your fee agreement or engagement letter did not notify your client about your file retention and destruction policy, you should obtain all clients' permission to destroy the files after approximately 10 years. The PLF recommends that closed files be kept for 10 years or longer. (See *File Retention and Destruction Guidelines* available at www.osbplf.org. Select Practice Management > Forms > File Management.) 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.
9. Send the name, address, and phone number of the person who will be retaining your closed files to the OSB Regulatory Services, P.O. Box 231935, Tigard, OR 97281-1935. Also send them your name, current address, and phone number.
10. If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your disconnected phone 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. In the alternative, arrange for your telephone number to have a recorded announcement about your closed office for 30 to 60 days after you close your office.

CHECKLIST FOR CLOSING YOUR OWN OFFICE

11. If you are a notary and resign your commission, file a resignation with the Oregon Secretary of State:

“A notary public whose commission was terminated because of resignation shall arrange for the storage of his/her notarial records, in any form and at any location within 30 days following resignation. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records pursuant to OAR 160-100-320(1).

A notary public shall store such records for a period of seven years after the date of resignation. After the seven-year period, the notary public may destroy such records pursuant to OAR 160-100-320(3).”

A notary resignation form is available on the Oregon Secretary of State’s website at <http://sos.oregon.gov/business/Documents/notary-forms/termination-of-notary-public-commission.pdf>.

12. If you are a registered agent for Oregon businesses, deliver a signed, written statement of resignation to the Corporation Division and give notice to the affected businesses.

Businesses must designate a new registered agent and provide that information to the Corporation Division. Failure to do so will result in the administrative dissolution of the business.

For more information and forms, see <http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx>.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2019 OSB Professional Liability Fund.

CHECKLIST FOR SELLING YOUR LAW PRACTICE

Screen the Buying Lawyer

1. Screen the buying lawyer for skills, experience, and competence. Ask for a resume, personal and professional references, and the names of staff and other lawyers with whom the buying lawyer has worked. You may want to observe the buying lawyer's court or administrative appearances.
2. Verify the buying lawyer's bar admission.
3. Research the buying lawyer's reputation. Talk to people with whom the buying lawyer has had contact as co-counsel, as an adversary, through participation in bar groups, in the community, or elsewhere. Speak to personal and professional references provided to you by the buying lawyer.
4. Research the buying lawyer's discipline history on the Oregon State Bar website. (Find the lawyer in the online Member Directory and select "Show Discipline History.") To review disciplinary files of the buying lawyer, complete the request form available here: https://www.osbar.org/secured/review_request.asp.
5. Ask the buying lawyer to request a list of his or her legal malpractice claims history from the Professional Liability Fund (PLF) and provide it to you. NOTE: Although it is helpful to discuss and look over the lawyer's malpractice claims history, please keep in mind some important things. (1) The only information that the PLF will provide to the lawyer is a list with the date of the malpractice claim, the claimant, and the amount of money paid on the claim. (2) If the claim is a currently pending, the lawyer who is the subject of the claim will not be able to discuss the facts of the case with you or anyone else. (3) In addition, the PLF wants all lawyers to be mindful that malpractice claims are not necessarily an indicator of the lawyer's legal skills or character. Professionally, the odds are that every lawyer will have one or more malpractice claims during the course of his or her career.
6. Discuss the following issues with the buying lawyer:
 - a. Why does the buying lawyer want to purchase a law practice?
 - b. What is the buying lawyer's experience?
 - c. What are the buying lawyer's professional goals?
 - d. What is the buying lawyer's philosophy toward clients and the practice of law?
 - e. What kind of office systems has the buying lawyer used? What technology is he/she familiar with?
 - f. Does the buying lawyer have an existing client base and office systems that need to be incorporated into the selling lawyer's practice as part of the transition?
 - g. Does the buying lawyer have excess coverage with the PLF or another carrier? (All lawyers in private practice in Oregon are required to carry minimum coverage of \$300,000 indemnity/\$50,000 claims expense annually under the PLF primary claims made plan. For more information, visit the PLF website, <https://www.osbplf.org/about-plf/overview.html>.)
 - h. Is the buying lawyer involved in any state or local bar sections or committees? Other activities in the community?

Understand Your Obligations under the Rules of Professional Conduct

1. Oregon lawyers may sell all or part of a law practice, including goodwill. ORPC 1.17(a).

CHECKLIST FOR SELLING YOUR LAW PRACTICE

2. There is no prohibition against payments to a selling lawyer for the sale of a law practice in accordance with ORPC 1.17. ORPC 1.5(e).
3. It is permissible for a selling lawyer to reveal the following information to a potential buyer of the practice provided it does not compromise the attorney-client privilege or otherwise prejudice any of the clients:
 - a. The client's identity;
 - b. The identities of any adverse parties;
 - c. The nature and extent of the legal services involved; and
 - d. Fee and payment information.

See ORPC 1.6(b)(6) for complete details.

4. Potential buying lawyers should screen for possible conflicts of interest involving the selling lawyer's clients.
5. Provide written notice of the proposed sale to each of your current clients whose legal work is subject to the transfer. ORPC 1.17(b). The notice must include the following information:
 - a. That a sale is proposed;
 - b. The identity of the buying lawyer or law firm, including office address and brief description of the size and nature of the buying lawyer's or law firm's practice;
 - c. That the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the lawyer or law firm;
 - d. That the client's legal work will be transferred to the buying lawyer or law firm, who will then take over the presentation and act on the client's behalf, if the client does not object to the transfer with forty-five (45) days after the date the notice was mailed; and
 - e. Whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.
6. Send the notices by certified mail, return receipt requested, to the clients' last known addresses. ORPC 1.17(b).
7. If certified mail is not effective to give a client notice, the selling lawyer must take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required. ORPC 1.17(d).
8. The notice may describe the buying lawyer's or law firm's qualifications, including the selling lawyer's opinion of the buying lawyer's or law firm's suitability and competence to assume representation of the client, *but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion*. ORPC 1.17(c).
9. A client's consent to the transfer of its legal work to the buying lawyer or law firm will be *presumed* if no objection is received within forty-five (45) days after the date the notice was mailed.
10. If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made. ORPC 1.17(f)

CHECKLIST FOR SELLING YOUR LAW PRACTICE

11. *Practice Tip:* Selling lawyers should prepare a current client list to use in monitoring the progress of transferring clients. If any client objects to the transfer of its legal work, a note can be made on the current client list. This same list can be used to track the preparation and submission of substitutions of counsel for clients whose work is transferred without objection.
12. If a client objects to the transfer of its legal work, the selling lawyer should review ORPC 1.16 (Declining or Terminating Representation) if the selling lawyer intends to withdraw prior to concluding the client's matter. Also, see OSB Formal Opinion 2011-185 – Withdrawal from Litigation: Client Confidences.
13. The fees charged clients shall not be increased by reason of the sale except upon agreement of the client. ORPC 1.17(g).
14. The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted. ORPC 1.17(h). The selling lawyer may wish to include terms in the sales agreement that permit the selling lawyer to continue working on the legal matters of any clients who object to the transfer of their work
15. A buying lawyer or law firm may use in a firm name or names of one or more of the retiring, deceased, or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation. See ORPC 7.1 and 7.5(a).

Preparing for and Selling Your Law Practice

1. Consider hiring a business attorney and a business valuation expert who can assist you in the valuation of your business. See the PLF practice aid, *Resources for Lawyers Planning to Sell Their Law Practices*, available on the PLF web site, www.osbplf.org. Consider such factors as:
 - a. Terms of payment;
 - b. Geography;
 - c. Nature of the practice;
 - d. History of client retention by the selling firm;
 - e. Size of practice;
 - f. Whether the client base will remain with the buying attorney for a designated period of time; and
 - g. Whether an earn-out or pay-out based on collections can be created assuring the buyer that payments will be made only for designated revenues received.
2. Determine sales price and terms.
3. Prepare a sales timeline that complies with ORPC 1.17.
4. Advertise the sale of your practice in the *Oregon State Bar Bulletin*, online in the Oregon State Bar Career Center, <http://www.osbar.org/osbcenter/careerintro.html>, in your local bar newsletter, and other sites as desired.

CHECKLIST FOR SELLING YOUR LAW PRACTICE

5. If office furniture, equipment, or library materials are not included in the sale of your practice, place a separate ad for these items in the *Oregon State Bar Bulletin*, your local bar newsletter, or on the Web through resources such as Craigslist, <http://geo.craigslist.org/iso/us/or>.

Resources

1. Review the following PLF materials for other pertinent steps:
 - Closing Your Law Office – Checklists, sample letters, resources
 - File Management – File Retention Guidelines (also in Closing Your Law Office)
 - Retiring from Law Practice – Checklist, resources
 - Selling Your Law Practice – Resources for Lawyers Planning to Sell Their Law Practices
 - Trust Accounting – Closing Your IOLTA Account (also in Closing Your Law Office)

These resources are available on the PLF Web site, www.osbplf.org. Select Practice Management, then Forms.

2. The Oregon Rules of Professional Conduct (ORPCs) may be found at <http://www.osbar.org/docs/rulesregs/orpc.pdf>.
3. The Oregon State Bar Formal Ethics Opinion Library is available here: <http://www.osbar.org/ethics/toc.html>.
4. Review the Checklist for Buying a Law Practice, also available on the PLF website, www.osbplf.org, to learn about the sale of a law practice from the buyer's perspective. Select Practice Management, then Forms.
5. Call the PLF practice management advisors at 503-639-6911 or 800-452-1639 for assistance or answers to any questions.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © [2019] OSB Professional Liability Fund.

inPractice

Practical Advice for Oregon Lawyers

[inPractice Blog](#) » A Better Way to Store Your Closed Files

A Better Way to Store Your Closed Files



July 28, 2017
by [Hong Dao](#)

The PLF gets frequent calls from lawyers asking about best practices for dealing with closed files. Traditionally, lawyers put their closed paper files in filing cabinets and store them in their office. When the cabinets are full, they move the files to a storage facility or the basement of the office building. The files stay there until destruction time, which is usually 10 years. See our [File Retention and Destruction Guidelines](#) [here](#). As the years go by, lawyers end up with so many boxes or filing cabinets full of old paper files that storage space is no longer sufficient and storage cost

is no longer affordable.

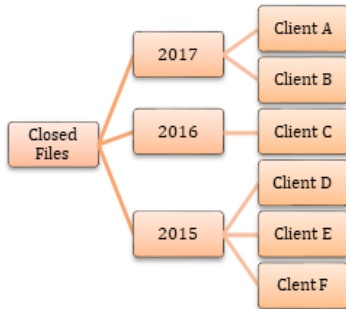
Is there a better way?

If you do not want to store boxes and filing cabinets of old paper files, start converting them to electronic files. Promptly scan your paper when the matter is completed. You will save on storage and labor costs, and it's easier to retrieve or access electronic files than paper files.

Take the following steps before starting the conversion process:

1. Go through each file and identify all original documents. Return to the clients those originals that you not required to keep. For more information on retaining original documents, see our [File Retention and Destruction Guideline](#).
2. Remove duplicate copies of documents.
3. Make sure the file is complete. See [OSB Formal Opinion No. 2017-192](#) for a discussion of what constitutes the client file.

Once those steps are taken, scan your paper file and then securely destroy it. Then incorporate the part of the client file that already exists in electronic format (e.g. emails, media, etc.). Save electronic closed files in one location on the server or your computer. Organize them by the year in which they are closed. Here's a sample file structure:



When you no longer want those files on your working computer or server, you can easily transfer them to an external hard drive or CDs. Some lawyers use a separate CD for each year, and when 10 years have passed, they securely destroy the CD.

It's best to scan files as you close them. If you wait too long to scan, they will pile up and you will have a backlog. It's easier and more motivating to scan one or two files at a time as opposed to scanning a big pile of them.

What about really old files?

You may have many years' worth of old files still waiting to be shredded at the end of the 10-year mark. Should you scan those files? It's really up to you. If you have the time, motivation, and resources to scan them, start with the most recent closed files first and work your way backward. If you don't have the time or inclination, I suggest adopting a "today forward" approach of promptly scanning your files as you close them. It's okay to just leave those old paper files as they are until it's time to securely destroy them.

The PLF has a helpful checklist for scanning client files available [here](#).

© 2020 Oregon State Bar Professional Liability Fund. All Rights Reserved.

More Than One Way Out: Options for Lawyers Looking to Transition Out of Practice

By: Hong Dao

Introduction

Even the best lawyers must quit one day. No attorney can practice forever. Those who plan ahead to transition out of practice have the chance of passing along the legacy they've built over many years. Those who don't plan ahead may have their hands tied. An office closure, either by the lawyers themselves or by someone else because the lawyers passed away while in practice, is a likely consequence of the latter. Consider the following scenarios.

Ingrid has a successful solo practice that she has built over the last 30 years ago. Her husband recently passed away and she is expecting her first grandchild. She wants to slow down a bit to spend more time with her family. She can certainly work for another 10 years, but wants to retire in 5-7 years. After many years of practicing alone, she is ready to share her practice with someone whom she hopes will eventually take over and continue to serve her clients. Ingrid tries to make plans to transition, but postpones taking action because doesn't know what her options are.

Irene and Clarence started practicing law together over almost 40 years ago. They practice in a limited liability partnership with a few legal support staff. Their successful firm is known and respected in the region. Both partners want to retire in a year. They have never hired associates to work with them for different reasons. At this stage, they think it is too late to do so. They decide their only option is to close the practice completely. So they start to wind down the practice.

Attorneys may find themselves in Ingrid's or Irene and Clarence's situation. They may wonder whether they have to close their office or whether can sell their law practice to another lawyer. Are there other options that do not involve a buy-sale, but still allow them to transition out of practice without closing their doors?

Alternative to an office closure

The common thing that lawyers do when they want to retire or leave private practice is to close their law practice. While office closure is a perfectly sound option, there is one particular disadvantage worth mentioning. An office closure means all the hard work and resources that attorneys invested in building their law practice will evaporate. An office closure shuts off the possibility for the attorneys to reap the benefits of the value and legacy they created.

If lawyers give themselves enough time to come up with a transition plan and actually take steps to implement it, they can avoid an office closure. Here are some alternatives to an office closure: (1) sell the law practice; (2) take in a partner or associate to make a gradual transition; (3) merge with an existing law practice.

Selling the Practice

It is permissible for lawyers to sell their law practice. Under Oregon Rule of Professional Conduct 1.17, lawyers may sell all or part of their law practice, including their goodwill. The sale must comply with the requirements of ORPC 1.17. The selling attorneys are required to provide written notice of the proposed sale to each current client. ORPC 1.17(b) and (c) specify the information that must be included in the notice.

Unlike the sale of a home in which a buyer may freely walk around in the house to look at everything inside, the buying lawyer is not allowed to access client files or any information subject to ORPC 1.6. It is, however, permissible under ORPC 1.6(b)(6) for the selling lawyer to disclose certain information, provided it does not compromise attorney-client privilege or otherwise prejudice any of the clients. The information that could be revealed includes: the identities of the client and any adverse parties; the nature and extent of the legal services involved; and fee and payment information.

Lawyers buying and selling law practices should understand their professional ethical obligations to avoid any missteps that can get them into hot water.

Valuing the Law Practice

Not all law practices can be sold. The simple reason is that not every law office has a marketable value. According to Roger Delles, a transition specialist, the value of a law practice is based on (1) tangible assets like office furnishings, equipment, building, and books, and (2) intangible assets like business earnings and goodwill. Valuing the former is fairly easy through appraisals and fair market value estimates. Unless the lawyer owns the land and the actual office building, the tangible assets of a law office is relatively miniscule. The desk, computer, chairs, filing cabinets, bookcases, and law books do not add up to great value. General business earnings can be gleaned from various financial documents. A business valuation expert may be able to assist with accessing the financial condition of the practice.

The reality is that earnings of a law practice fluctuate. Lawyers rarely have clients who return regularly for legal services. Most lawyers see a client only once or maybe twice in their life. Few have a consistent book of business. Thus, when lawyers sell their law practice, they are essentially selling their goodwill generated from the reputation of the firm, client base and loyalty, the sources of referrals, and personality of the lawyer. But placing a monetary value on goodwill can be tricky. For this reason, it may be difficult to put a price tag on the law practice for the sale.

Financing the Sale

Although a law practice may be difficult to value, it is not impossible. For example, an attorney who represents only dental clinics on a whole range of issues from discipline and licensing to commercial lease and employment has a valuable and consistent book of business. The lawyer may be able to value her law practice based on prior business tax returns, personal income tax returns, and balance sheets and other financial data. A professional business appraiser can help determine whether an asset, market, or income approach should be used to determine the value of a law practice.

Once a law practice has been valued and placed on the market for sale, then it's a matter of finding an able and willing buyer. The ideal buyer is a lawyer who can secure financing through a bank or credit union to close the purchase. Realistically, most lawyers are burdened with student loans, a mortgage, a car loan, and other personal/consumer debt that they just can't afford to buy a law practice. So while it is permissible and appealing to sell and buy law practices, it may not be financially practical.

That being said, one Oregon lawyer was able to buy the law practice of a deceased attorney. The lawyer read in the community newspaper about the attorney's passing and approached the estate with an offer to buy the office building. They also negotiated for the contents inside the building, which including furnishings and all client files. Offer accepted. Financing secured. The sale closed.

If the buy-sale option is out of reach, there are alternatives that benefit both the transitioning out lawyer as well as the incoming lawyer.

Gradual Transition

For lawyers who are not looking to retire or leave the private practice of law in the immediate future, a gradual transition may work as succession plan for those looking to retire some day. Gradual transition is a way of bringing in another lawyer, usually someone younger, and having that person slowly take over the practice so the older lawyer may slowly transition out of practice. This transition model benefits the transitioning-out lawyer in the following ways:

- Ability to work fewer hours and have someone available to cover in their absences;
- Clients continued to be served by someone trained by the lawyer;
- Staff, if any, remain employed;
- Sharing of overhead costs; and
- Opportunity to mentor and teach.

The incoming lawyer also benefits from this model:

- Consistent workflow;

- An established office system (and legal staff, if any);
- Opportunity to be mentored and learn from the experienced lawyer; and
- Eventually or immediately owning a law practice without opening one's own practice.

There is no “right” transition model. What works for one lawyer may not work for another. A lawyer may make a gradual transition by:

- Forming a partnership with a lawyer of some legal experience;
- Hiring an associate with the intention that the associate will take over the practice as a partner in the future; or
- Hiring a contract attorney on a few projects, see how the attorney performs, then hire that attorney as an associate or enter into partnership.

Forming a Partnership

In Ingrid's situation, she may decide to enter in a partnership with another lawyer right away. The decision to partner with a new lawyer or one with limited legal experience is completely up to the transitioning-out lawyer. It is prudent for the lawyer to thoroughly research and vet the potential candidates for partnership. See “Finding the Right Fit” section below. The lawyer and the new partner will need to work out the details of the partnership before signing an agreement. Some items to consider: partnership buy-out; allocation of losses, profits, expenses, and income; limits on partnership authority; and management duties. A detailed checklist for creating a partnership agreement can be found on the Professional Liability Fund's website at www.osbplf.org. Click on Forms under Practice Management.

Once the partnership is in place, the lawyer may then do what is necessary to gradually transition out of practice. For Ingrid, she may continue working full time for one or two years, then slowly reduce her caseload. She will have the flexibility to spend more time with her family because her partner will cover for her in her absences.

Hiring an Associate

If Ingrid is uncomfortable with forming a partnership with a stranger, she may hire that person as an associate with the intent to have the person take over the practice as partner in the future. This may require paying the associate a salary that Ingrid can afford. Lawyers in Ingrid's position should be open to candidates of varying legal experience. It may be unrealistic to expect the candidate to be a partner or a senior associate of a law firm. Those lawyers may not want to leave their salaried position with benefits to start over as an associate in another practice.

It can take up to several months for the lawyer to evaluate whether the associate is a good fit. If the associate is not someone with whom the attorney wants to continue practicing, the attorney should terminate the employment and be prepared to hire another associate. It is not unusual for a lawyer to go through a couple of associates before finding the right one to offer partnership. The attorney may avoid this problem by taking time to research the candidate.

Hiring a Contract Attorney

The fact that Ingrid has never employed another attorney in the past may lead her to hire a contract attorney first to test things out. Ingrid can hand a few cases to the contract attorney to work on. The contract lawyer relationship may continue until the Ingrid feels she has a good understanding of the lawyer's work ethics, work quality, and personality. Just like the situation with the associate above, if the contract lawyer is not a good fit, Ingrid will need to terminate the independent contractor relationship and find another person. If the contract lawyer is a good fit, Ingrid may decide to make that person an associate or a partner.

Merging Law Practices

Some lawyers do not want to take on associates or deal with contract attorneys. There is no guarantee that after training and mentoring them, the associates won't leave the firm to work for a competitor or start their own practice. In that case, the gradual transition model may not work for these lawyers. The lawyers may consider merging their law practice with an existing practice—another partnership or a solo practice. These two existing practices will have their own office systems, files, legal staff, technologies, management styles, among other issues, that will need to be addressed. Once those issues are resolved, the merger will allow both practices to capitalize on each other's goodwill and offer more services to clients.

In Irene and Clarence's situation, a merging with another practice is a viable option. They can avoid having to hire an associate or bringing in a younger partner, but at the same time benefit from passing their legacy to the merged firm. Once they retire, the remaining lawyers can decide whether they want to hire associates to fill the gaps left by Irene and Clarence.

Finding the Right Match

Finding and recruiting the right candidate to bring in for the transition is not easy if lawyers do not leave plenty of time to look. Ideally, lawyers should leave 3-5 years for the transition process to unfold. Realistically, 1-to-2-year period is the time frame that lawyers are operating in.

The most common recruitment method is to take out an ad in the Bar Bulletin, MBA newsletter, craigslist, or newspaper, or on a listserve of a professional organization or a Bar section. An effective ad should be clear as to what the lawyer wants. If the lawyer wants to bring in an associate who can someday take over the practice, that intention should be clearly stated. Experienced attorneys or partners of a firm may be willing to leave their firm if they know that the associate position is a small step away from owning their own practice.

Lawyers should also inform their contacts at the different law schools and career services about this opportunity. Law professors may know of potential new graduates interested in taking over an existing law office rather than opening their own.

Even the courthouse can be a good place to recruit potential candidates.

One younger solo practitioner, who frequently appeared in court, used that opportunity to observe an experienced attorney at trial. Both practiced in the same legal area, so they saw each other in court regularly and got to observe each other. They soon became acquainted. The experienced attorney started giving the younger lawyer cases to work on as a contract attorney. That attorney later hired the young lawyer as an associate, who later became a partner.

Another attorney in rural Oregon, who is also a pro tem judge, found his transition partner by observing a younger lawyer in his court for over a year. The senior attorney was impressed at how smart, professional, and exceptional the younger lawyer was. One day, the senior attorney invited him to lunch and offered him an opportunity to become an owner in the firm. The younger lawyer accepted. This lawyer started out as an associate and became a partner within a few short years.

Attorneys may not want to make their transition public for various reasons. These attorneys can start by talking to trusted colleagues and friends in the legal community who may know of potential candidates. If the lawyers have worked with a contract attorney in the past or are acquainted with someone with whom they are impressed, it does not hurt to just approach that person.

One solo, who is now retired, found his transition partners in two younger attorneys who were renting office space from him. The attorney hired these lawyers on a contract basis to work on certain cases for about two years. He then approached them about entering into a partnership and they accepted. The attorney retired three years after the partnership was formed.

When it comes to recruitment, lawyers need to keep their eyes and ears open, and be willing to take a leap of faith to approach another lawyer.

Researching the Lawyer

The candidates must be researched and vetted for skills, experience, and competence. The lawyer should meet multiple times with the candidates to get to know them. Ask for their resume and professional references. Some sample due diligence tasks include:

- Verify the candidate's credentials to ensure that you will leave your practice in competent hands;
- Research their reputation and talk to people in the legal community with whom the candidates have had contact;
- Ask the candidates to provide a list of malpractice claims and check the Oregon State Bar for disciplinary actions against them; and
- Ask the candidates about their open files and closed cases and whether there are legal staff and office systems that they will bring with them in the transition.

A thorough checklist for lawyers transitioning in and out of practice can be found at the Professional Liability Fund's website at www.osbplf.org. Click on Forms under Practice Management.

Determining a fair compensation formula

Deciding on how to compensate the incoming lawyer and buying out the retiring lawyer does not happen in one meeting. Both attorneys need to take a lot of time to talk about different compensation formulas that will work for both of them.

Compensating the Incoming Lawyer

It is important for the incoming lawyers to have realistic expectations of how they will be compensated. Attorneys who transition into a small firm or solo practice should not expect to be compensated with a fixed salary or annual income guarantee from the transitioning-

out lawyer. A few solos can provide that fixed income, but the vast majority cannot. A fair compensation for the incoming lawyer will depend on many factors, including whether the lawyer comes in as an associate (employee) or a partner (self-employed). Having lengthy discussions about compensation up front will help both attorneys understand what is feasible and what is not. As there is no magic compensation formula that works for every situation, it may be helpful to see how other lawyers in Oregon have done this in the past.

The compensation arrangement that a sole practitioner and his transition partner entered into has been successful for them. The agreement is this: incoming lawyer keeps 100% of his earned fees and pays 100% of the overheads. Transitioning-out lawyer contributes 20% of his earned fees to the new lawyer to help cover overheads. Each lawyer pays for their own bar dues and PLF assessments. They have a system to divide the earnings from staff billing.

For example: New attorney brings in \$8,000 a month of earned fees. She keeps the entire amount. Transitioning-out lawyer brings in \$15,000 of monthly earned fees, and gives 20% to the new attorney. New attorney now has \$11,000. Overhead is \$6,000, which the new attorney has to cover. Staff bring in about \$2,000 of monthly billable hours, and let's say new attorney gets 50% of those fees. So the new attorney nets \$6,000 a month. $((\$8,000 + \$3,000 + 1,000) - \$6,000.)$

The main concern about this compensation model is that that new attorney may not have enough earned fees in a month to cover the overhead. This is something that both attorneys should discuss in details to work out a plan B. The transitioning-out lawyer could agree to "subsidize" the new lawyer for a few months until she catches up on her billing. Or they can agree the new lawyer should take a draw to cover the first few months of practice. There is no fixed and fast rule on this.

Some other common compensation models used by Oregon lawyers include:

- Evenly splitting overhead and expenses, but dividing revenues on a percentage based on ownership share in the firm or amount of fees each lawyer generates or both.
- All lawyers keeping their own fees but sharing overhead based on a percentage that depends on fees earned by each lawyer.
- Paying the incoming lawyer a salary with options to buy shares in the firm on an annual basis. Cost of overhead is split based on percentage of shares owned.

Compensating the Transitioning-out Lawyer

Not every law practice can afford to buy out a retiring partner. This is especially true for law practices that do not have consistent book of business and stable client base. Retiring

attorneys with a small or solo practice normally do not expect a buy-out from their transitioning-in partner. But no lawyers will be opposed a buy-out if one is possible. An example of how this could be done may be instructive.

The previous section mentions a now-retired lawyer who found his transitioning partners in two younger lawyers to whom he rented his office space. Their partnership agreement laid out a plan to compensate the original lawyer upon retirement. The lawyer retired three years after the transition. The compensation formula was based on going back three to four years prior to retirement to compute an average of the annual income of the firm and using that figure to buy the lawyer out. That figure was paid to the lawyer on a monthly basis for a period of four years. The retired lawyer also owned the building, so the new attorneys paid rent to him until they eventually bought the building from the lawyer.

Other buy-out models are based on paying the retired or transitioning-out lawyer a certain percentage based on the annual income revenues of the firm. The payments are made on a monthly basis for a period of three to seven years. This model differs from the example above because the monthly payments vary depending on the firm's current earnings. In the above example, the retired attorney received a fixed amount of monthly payment determined by how much he generated when he was in practice.

There are other models out there, both complicated and simple, and lawyers are encouraged to find the one that fits their needs.

Conclusion

Now is the time to think about transition. There are many options available to lawyers who leave plenty of time to transition out of private practice. Whether it is to sell the practice, or make a gradual transition, or to merge with another office, time is required to make it all happen in a way that leads to a happy ending for everyone involved.

ABOUT THE AUTHOR

Hong Dao is a practice management advisor with the OSB Professional Liability Fund. She can be reached at (503) 726-1467 or by email at hongd@osbplf.org.

©2015 Hong Dao

OREGON RULES OF PROFESSIONAL CONDUCT

RULE 1.3 DILIGENCE

A lawyer shall not neglect a legal matter entrusted to the lawyer.

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve

information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

RULE 1.15-1 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in amounts necessary for those purposes.

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.

RULE 1.17 SALE OF LAW PRACTICE

(a) A lawyer or law firm may sell or purchase all or part of a law practice, including goodwill, in accordance with this rule.

(b) The selling lawyer, or the selling lawyer's legal representative, in the case of a deceased or disabled lawyer, shall provide written notice of the proposed sale to each current client whose legal work is subject to transfer, by certified mail, return receipt requested, to the client's last known address. The notice shall include the following information:

(1) that a sale is proposed;

(2) the identity of the purchasing lawyer or law firm, including the office address(es), and a brief description of the size and nature of the purchasing lawyer's or law firm's practice;

(3) that the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the purchasing lawyer or law firm;

(4) that the client's legal work will be transferred to the purchasing lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and

(5) whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.

(c) The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.

(d) If certified mail is not effective to give the client notice, the selling lawyer shall take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required in subsection (b).

(e) A client's consent to the transfer of its legal work to the purchasing lawyer or law firm will be presumed if no objection is received within forty-five (45) days after the date the notice was mailed.

(f) If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made.

(g) The fees charged clients shall not be increased by reason of the sale except upon agreement of the client.

(h) The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy.

RESOURCES FOR ATTORNEYS CLOSING THEIR OFFICES

PRACTICE MANAGEMENT ASSISTANCE FOR ATTORNEYS CLOSING THEIR OFFICES

Professional Liability Fund

<https://www.osbplf.org/practice-management/practice-management-advisors.html>

16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224

PO Box 231600, Tigard, OR 97281-1600

503-639-6911 or 800-452-1639

PERSONAL ASSISTANCE FOR ATTORNEYS CLOSING THEIR OFFICES

Oregon Attorney Assistance Program (OAAP)

<http://www.aaap.org/>

520 SW Yamhill St., Suite 1050

Portland, Oregon 97204

503-226-1057 or 800-321-6227

LAWYER REFERRAL SERVICES (FOR CLIENTS)

Oregon State Bar Lawyer Referral Service

<https://www.osbar.org/public/ris/>

P.O. Box 231935

Tigard, OR 97281-1935

503-684-3763 or 800-452-7636

LEGAL ETHICS QUESTIONS

Oregon State Bar Legal Ethics Helpline

<https://www.osbar.org/ethics/>

P.O. Box 231935

Tigard, OR 97281-1935

503-431-6475

ETHICS COMPLAINTS

Oregon State Bar Client Assistance Office

<https://www.osbar.org/public/legalinfo/1174.htm>

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260 (Ext. 332)

Contact: CAO Manager

OREGON STATE BAR DISCIPLINE – INFORMATION REGARDING ATTORNEYS WHOSE OFFICES ARE CLOSED

Oregon State Bar Disciplinary Counsel

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260

Contact: OSB Disciplinary Counsel

CLIENT SECURITY FUND CLAIMS

Oregon State Bar Client Security Fund

<https://www.osbar.org/csf>

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260

RESOURCES FOR ATTORNEYS CLOSING THEIR OFFICES

Contact: OSB General Counsel

ATTORNEY OBITUARIES

Oregon State Bar *Bulletin*

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260 (Ext. 340 or 391)

Contact: Editor

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2019 OSB Professional Liability Fund.

RESOURCES FOR LAWYERS PLANNING TO RETIRE

OREGON ATTORNEY ASSISTANCE PROGRAM

<https://oaap.org/>

Oregon Attorney Assistance Program (OAAP)

<https://oaap.org/contact-us/>

520 SW Yamhill St., Suite 1050

Portland, OR 97204

503-226-1057 or 800-321-6227

OREGON STATE BAR

<https://www.osbar.org/index.html>

IOLTA COMPLIANCE

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260

Compliance: <https://www.osbar.org/IOLTA>

FAQ: <https://www.osbar.org/IOLTA/faq.html>

DISPOSITION OF CLOSED ATTORNEY FILES

Oregon State Bar Regulatory Services

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260

- If you are changing your bar membership status, and someone else will be storing your closed files, you will notify the bar of the location as part of your status change application at <https://www.osbar.org/statuschanges/statuschangeFAQ.html>.
- If you are maintaining active bar membership status, and someone else will be storing your closed files, notify the bar of the location via email to regsvcs@osbar.org.

LAWYER REFERRAL SERVICE (FOR CLIENTS)

Oregon State Bar Lawyer Referral Service

P.O. Box 231935

Tigard, OR 97281-1935

503-684-3763 or 800-452-7636

<https://www.osbar.org/public/ris/>

LEGAL ETHICS QUESTIONS

Oregon State Bar Legal Ethics Helpline

P.O. Box 231935

Tigard, OR 97281-1935

503-431-6475 or 800-452-8260

<https://www.osbar.org/ethics/>

MEMBERSHIP STATUS CHANGES

Oregon State Bar

P.O. Box 231935

Tigard, OR 97281-1935

503-620-0222 or 800-452-8260

<https://www.osbar.org/statuschanges/statuschangeFAQ.html>

PRO BONO INFORMATION

RESOURCES FOR LAWYERS PLANNING TO RETIRE

Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935
503-620-0222 or 800-452-8260
<https://www.osbar.org/probono/>

PROFESSIONAL LIABILITY FUND

<https://www.osbplf.org/>

COVERAGE QUESTIONS, INCLUDING TAIL COVERAGE AND EXCESS

Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224

PO Box 231600, Tigard, OR 97281-1600

503-639-6911 or 800-452-1639

Primary Plan Overview: <https://www.osbplf.org/coverage/overview.html>

Leaving Private Practice: <https://www.osbplf.org/assessment-exemptions/exemptions.html>

Excess Plan Overview: <https://www.osbplf.org/excess-coverage/overview.html>

MID-YEAR EXEMPTION FROM COVERAGE

Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224

PO Box 231600, Tigard, OR 97281-1600

503-639-6911 or 800-452-1639

Contact: Accounting Department - Direct Dial: 503-924-1771 (<https://www.osbplf.org/assessment-exemptions/midyear-exemptions.html>)

PRACTICE MANAGEMENT ASSISTANCE

Professional Liability Fund

<https://www.osbplf.org/practice-management/practice-management-advisors.html>

16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224

PO Box 231600, Tigard, OR 97281-1600

503-639-6911 or 800-452-1639

RECORDED CLES AVAILABLE ON THE PLF WEBSITE, www.osbplf.org

- *The Next Stage: Planning NOW for the Retirement that YOU Want*
- *Health Insurance Today, At Sixty-Five and In Retirement*

ARTICLES AND FORMS AVAILABLE ON THE PLF WEBSITE, www.osbplf.org

- *Checklist for Lawyers Planning to Retire*
- *Resources for Lawyers Planning to Retire*
- *Checklist for Lawyers Planning to Sell Their Law Practices*
- *Resources for Lawyers Planning to Sell Their Law Practices*
- *Checklist for Closing Your Own Office*
- *Closing Your IOLTA Account - Information*
- *File Retention and Destruction Guidelines*
- *Letters for Closing Your Law Office*

AMERICAN BAR ASSOCIATION

<https://www.americanbar.org/>

ABA COMMISSIONS AND DIVISIONS

The Commission on Law and Aging

RESOURCES FOR LAWYERS PLANNING TO RETIRE

https://www.americanbar.org/groups/law_aging/

Senior Lawyers Division

https://www.americanbar.org/groups/senior_lawyers/

ABA BOOKS AND VIDEOS

The Lawyer's Retirement Planning Guide

<https://www.americanbar.org/products/inv/book/227739316/>

ABA/AARP: Get the Most Out of Retirement: Checklist for Happiness, Health, Purpose and Financial Security

<https://www.americanbar.org/products/inv/book/252178854/>

Passing the Torch Without Getting Burned

<https://www.americanbar.org/products/inv/book/214260/>

Period. New Paragraph.

<https://www.americanbar.org/products/ecd/vppv/250111635/>

ABA web store products may be purchased at a discount using the Professional Liability Fund's promotional code OSBPLF. For more information, visit the PLF Website, www.osbplf.org.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented

RESOURCES FOR LAWYERS PLANNING TO RETIRE

does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2019 OSB Professional Liability Fund.

RESOURCES FOR SELLING YOUR LAW PRACTICE

OREGON STATE BAR

www.osbar.org

CLE – TRANSITIONS: BUYING, SELLING, OR TRANSFERRING A LAW PRACTICE

This free CLE was offered by the Oregon State Bar on November 1, 2013. The course book is available here: http://www.osbar.org/docs/LPT/LPT-CLE_1Nov2013_coursebook.pdf

CLOSURE OF LAWYER TRUST ACCOUNT

Attn: IOLTA COMPLIANCE

Oregon State Bar

16037 SW Upper Boones Ferry Road, Tigard, OR 97224

P.O. Box 231935, Tigard, OR 97281-1935

503-620-0222 or 800-452-8260 (Ext. 373)

LEGAL ETHICS QUESTIONS

Oregon State Bar General Counsel

16037 SW Upper Boones Ferry Road, Tigard, OR 97224

P.O. Box 231935, Tigard, OR 97281-1935

503-620-0222 or 800-452-8260 (Ext. 361)

<http://www.osbar.org/ethics>

MEMBERSHIP STATUS CHANGES

Oregon State Bar

16037 SW Upper Boones Ferry Road, Tigard, OR 97224

P.O. Box 231935, Tigard, OR 97281-1935

503-620-0222 or 800-452-8260 (Ext. 343)

ARTICLES AVAILABLE ON THE OSB WEB SITE

Succeeding at Succession: Buying and Selling Offer Options for Sole and Small Practices:

<https://www.osbar.org/publications/bulletin/13nov/succession.html>

OSB CAREER CENTER – LIST YOUR PRACTICE FOR SALE

<http://www.osbar.org/osbcenter/careerintro.html>

MULTNOMAH BAR ASSOCIATION

www.mbabar.org

CLE – BUYING, SELLING, AND TRANSITIONING IN OR OUT OF LAW PRACTICE

This CLE was offered by the Multnomah Bar Association on April 8, 2015. A recording of this CLE may be purchased at <https://www.mbabar.org/education/watch-archived-cle-webcast/buying-selling-or-transitioning-in-or-out-of-law-practice/>.

PROFESSIONAL LIABILITY FUND

www.osbplf.org

COVERAGE QUESTIONS, INCLUDING ERC AND EXCESS

Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224

PO Box 231600, Tigard, OR 97281-1600

503-639-6911 or 800-452-1639

RESOURCES FOR SELLING YOUR LAW PRACTICE

MID-YEAR EXEMPTION FROM COVERAGE

Professional Liability Fund
16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224
PO Box 231600, Tigard, OR 97281-1600
503-639-6911 or 800-452-1639
Contact: Accounting Department - Direct Dial: 503-924-1771

PRACTICE MANAGEMENT ASSISTANCE

Professional Liability Fund
16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224
PO Box 231600, Tigard, OR 97281-1600
503-639-6911 or 800-452-1639
Contact: Practice Management Advisors

Oregon Attorney Assistance Program (OAAP)

520 SW Yamhill, Suite 1050
Portland, Oregon 97204
503-226-1057 or 800-321-6227
Contact: Attorney Counselors

RECORDED CLES AVAILABLE ON THE PLF WEB SITE

- *Health Insurance Today, At Sixty-Five and In Retirement*
- *Retiring or Changing Careers? How to Leave Your Law Practice Well*
- *The Next Stage: Planning NOW for the Retirement that YOU Want*

FORMS AND ARTICLES AVAILABLE ON THE PLF WEB SITE

- *Of Counsel Relationships – In Brief* article
- *Retiring from Law Practice – Practice aid*
- *Lawyers Planning to Sell Their Practices Checklist – Practice aid*
- *More Than One Way Out: Options for Law Practice Transitions – In Brief* article

VALUATION OF A LAW PRACTICE

Business Valuation Services are included in the Directory of Products & Services on the Oregon State Bar web site: [https://www.osbar.org/secured/marketplace.asp#Business Valuations](https://www.osbar.org/secured/marketplace.asp#Business%20Valuations).

Susan A. Berson, "Valuing and selling a firm takes time, matchmaker skills," *ABA Journal* (March 1, 2015)
http://www.abajournal.com/magazine/article/valuing_and_selling_a_firm_takes_time_matchmaker_skills.

Ed Poll, "Selling Your Practice: Getting What It's Worth," *Law Practice Today* (November 17, 2014)
<http://www.lawpracticetoday.org/article/selling-your-practice/>

James D. Cotterman, "Valuation of a Law Firm and a Law Practice," Altman Weil (2014)
http://www.altmanweil.com/dir_docs/resource/e2473600-c8c7-4ace-852a-7835d540a6c3_document.pdf.

RESOURCES FOR SELLING YOUR LAW PRACTICE

WASHINGTON STATE BAR ASSOCIATION RESOURCES

Sell Your Practice [Tips] - <http://www.wsba.org/Resources-and-Services/Ending-Your-Practice/Sell-a-Practice>

Buy a Practice [Tips] - <http://www.wsba.org/Resources-and-Services/Starting-Your-Legal-Career/Buy-a-Law-Practice>

CRAIGSLIST, OREGON

<http://geo.craigslist.org/iso/us/or>

Visit Craigslist to sell your office equipment, furnishings, library, or to get pricing ideas.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © [2019] OSB Professional Liability Fund.

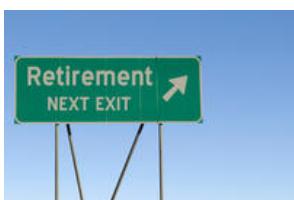
RESOURCES FOR SELLING YOUR LAW PRACTICE

inPractice

Practical Advice for Oregon Lawyers

[inPractice Blog](#) » Succession Planning: Developing a Reasonable Timeline and Identifying a Successor Attorney

Succession Planning: Developing a Reasonable Timeline and Identifying a Successor Attorney



February 2, 2017
by [Sheila Blackford](#)

One of the biggest roadblocks to succession planning is not adopting a reasonable timeline. I like reverse planning: Start with the end goal and work your way back. I guarantee that you will be surprised at how many interim steps are necessary.

Let's take George as an example. George has been practicing law since 1980 – 36 years. It seems so long. He always thought he would practice 40 years and then retire. Can he retire in 2020? Absolutely. The PLF has a practice aid checklist available for retiring from your law practice. Retiring involves many details, and creating a succession plan with a successor attorney requires even more considerations.

Let's put together a sample succession plan for George:

1. July 1, 2017: George selects a reasonable date for when he wants to shut the lights off and lock the door on the way out.
2. August 1, 2017: George meets with a consultant and CPA to discuss the value and best structure for the sale of his law practice.
3. August 30, 2018: Planning meeting to finalize the offering price and terms and marketing budget for national, regional, and local advertising, and nondisclosure and noncompete agreement drafted.
4. September 1, 2018: George places blind box ads in ABA Journal, OSB Bulletin, and respective state Bar magazines for Washington, California, and Idaho for their October issues.
5. October 1, 2018: George places blind box ads in Wall Street Journal and Oregon Daily Journal of Commerce.
6. October 30, 2018: George reviews all responses to advertising and selects and vets top three potential purchasers.
7. November 1, 2018: George sends nondisclosure noncompete agreements to top prospects and schedules conferences upon receipt of signed agreements.
8. March 1, 2019: George and the top potential buyer meet and do office walk through and discuss terms and succession plan subject to satisfactory conflicts search.
9. July 1, 2019: George and the buyer finalize the terms of their agreement.
10. September 1, 2019: George finalizes the client letter with his successor/purchasing attorney.
11. September 15, 2019: George prepares the client letter and client mailing list.
12. October 1, 2019: George sends out a letter to his clients regarding the intended sale of his law practice to his successor attorney per the requirements of ORPC 1.17(b).

(b) The selling lawyer, or the selling lawyer's legal representative, in the case of a deceased or disabled lawyer, shall provide written notice of the proposed sale to each current client whose legal work is subject to transfer, by certified mail, return receipt requested, to the client's last known address. The notice shall include the following information:

(1) that a sale is proposed;

(2) the identity of the purchasing lawyer or law firm, including the office address(es), and a brief description of the size and nature of the purchasing lawyer's or law firm's practice;

(3) that the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the purchasing lawyer or law firm;

(4) that the client's legal work will be transferred to the purchasing lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and

(5) whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.

13. November 30, 2019: Deadline for clients to pick up their client file or have the file transferred to successor/purchasing attorney.

14. December 31, 2019: Sale executed. Last day of business as George's Law Firm. George finalizes closing invoices and issues refunds or transfers checks for trust account.

15. January 1, 2020: Start of Successor Firm. George becomes of counsel to Successor Firm.

16. February 1, 2020: George closes general bank account and trust account.

17. December 31, 2020: George's retirement date.

It looks like George has a lot of work to do before he can retire, but with a timeline guiding him, his plan to retire brings him to his target date with everything handled. How about you? What does your succession plan look like? A good start would be to review the PLP's handbook, *Planning Ahead: a Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, along with our practice aids on [Retiring from Law Practice](#) and [Selling a Law Practice](#). Click on the links or visit www.osbplf.org, under Practice Management.

© 2020 Oregon State Bar Professional Liability Fund. All Rights Reserved.

The Of Counsel Relationship

Lawyers have been using the “of counsel” designation in a variety of ways for many years. Originally, the term was used to identify firm partners or judges transitioning from full-time legal practice into retirement. The definition has broadened over time to cover other relationships between lawyer and law firm, from testing out a lateral hire before extending a partnership offer to an attorney with special expertise joining the firm as a resource. Because of the variety of arrangements and inherent potential for ambiguity, attorneys and law firms should keep in mind a few considerations as they enter into of counsel relationships.

Conflicts of Interest

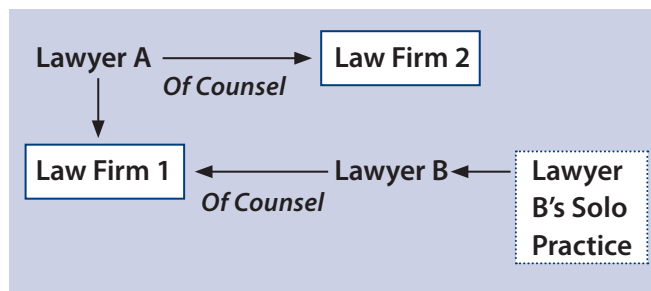
Oregon Rule of Professional Conduct (ORPC) 7.5(b) states that “[a] lawyer may be designated ‘Of Counsel’ on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate.” ORPC 1.0(d) provides that a firm “denotes a lawyer or lawyers, including ‘Of Counsel’ lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law...” Together, these two rules inform us that an of counsel attorney is considered a part of a law firm for conflict purposes.

The Oregon State Bar addresses the particularities of the conflict-of-interest issues created by of counsel relationships in Oregon Formal Ethics Opinion 2005-155. The opinion proposes the following scenario:

Lawyer A operates Law Firm 1 as a sole practitioner. Lawyer A is also of counsel to Law Firm 2 and is listed as such on Law Firm 2’s letterhead. Lawyer B is a sole practitioner who wishes to be of counsel to Law Firm 1.

What conflict-of-interest issues are implicated by the proposed arrangement?

In the relationships depicted above, Lawyer A is considered a member of his or her own solo practice, Law Firm 1. Lawyer A is also considered a member of Law Firm 2 because of Lawyer A’s of counsel relationship. Similarly, Lawyer B would be a member of both Lawyer B’s solo practice and Law Firm 1. Though more attenuated, Law Firm 2 would also be considered a member of Lawyer B’s solo practice. The clients of Law Firm 1 are deemed to be clients of Law Firm 1, just as the clients of Lawyer B’s solo practice are deemed clients of both Law Firm 1 and Law Firm 2. Put simply, Lawyer A/Law Firm 1, Lawyer B, and Law Firm 2 will be treated as a single unit for conflict-of-interest purposes.



This brief example makes it very clear that of counsel relationships can create a tangled web of conflict-of-interest concerns very quickly. Before entering into an of counsel agreement, be sure to closely examine each person or entity you will be joining. Does the law firm have more than one of counsel attorney? How many lawyers

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

and law firms will be entering into your conflict-of-interest evaluation? Questions like these are important to keep in mind as you contemplate an of counsel arrangement. For advice on the ethics rules applicable to of counsel relationships, call OSB General Counsel Helen Hierschbiel at 503-620-0222.

Liability for Lawyer and Law Firm

Liability is another concern for lawyers and law firms in of counsel relationships. Though the law on liability for of counsel attorneys is still developing, a few hallmark legal principles apply. Liability in contract will depend on the contractual agreement. In tort, the law firm will probably be responsible for the conduct of the of counsel attorney based on theories of respondeat superior or negligence (either negligent supervision or negligent selection). Though the law firm may seek to lessen its liability exposure for of counsel attorneys by using an independent contractor designation, the firm could still be held vicariously liable if actual or apparent authority existed. An Ohio appellate court found liability for an of counsel attorney based on an agency by estoppel theory.¹

Law firms should also be aware that of counsel attorneys are often considered part of a single practice unit along with the law firm on malpractice insurance plans and policies in excess of the \$300,000 mandatory PLF Plan. (The PLF Primary Plan differs because it provides coverage on an individual attorney basis, although multiple attorneys named on the same claim – including of counsel – could still share indemnity and expense limits.) For example, the PLF’s Excess Program considers of counsel attorneys to be part of the firm unit due to potential vicarious liability risk and requires them to be included on the firm’s application. Further, the Excess Program coverage assessment is charged on a per attorney basis – including of counsel members of the firm. Just as the ethics example pointed out, in terms of liability and cost, an of counsel attorney may well be considered a part of the firm.

Clarity in the Nature of the Relationship

Another consideration for law firms and attorneys is whether the use of the “of counsel” designation is false or misleading. Specifically, does its use accurately capture the relationship between the law firm and the of counsel attorney? ORPC 7.5(c)(1) states that a lawyer in private

practice “shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of the lawyers in the firm.” Oregon Formal Ethics Opinion No. 2005-12 addresses this issue in the following scenario. “Lawyers A, B, and C share office space. Beyond this, however, A, B, and C all maintain separate practices.” The question is whether A, B, and C may “hold themselves out, whether through the use of a common letterhead or otherwise,” as associates or of counsel with each other. The answer is no. To use an “of counsel” designation where none exists would be false or misleading and in violation of ORPC 7.5. In that situation, avoid representing the group as having an ongoing relationship if none exists. Instead, refer and associate on a case-by-case basis. The best practice would be to disclose any relationships you have with other attorneys and law firms.

What do the above considerations mean for Oregon lawyers and law firms? First, consider whether the of counsel relationship is the best option for your situation. If it is, choose carefully those lawyers and law firms with whom you associate in an of counsel relationship. Before entering into the relationship, consider the general history and reputation of the attorney or law firm, as well as any claims history and outside business relationships.

Second, identify whether the lawyer or law firm has any additional of counsel relationships. This is an extremely important step that will help you discover any conflict-of-interest issues early.

Finally, consider the professional liability implications of the of counsel relationship. This is particularly important for relationships with lawyers or law firms outside of Oregon. Your PLF coverage will not protect you from vicarious liability for your of counsel relationship with out-of-state lawyers or law firms.

Balance the purposes and benefits of the particular of counsel relationship you contemplate forming against the additional ethical and liability risks that you and your firm may assume.

EMILEE S. PREBLE

PLF STAFF ATTORNEY/EXCESS PROGRAM COORDINATOR

Thanks to Jeff Crawford, PLF Director of Administration and Excess Program, and Helen M. Hierschbiel, OSB General Counsel, for their assistance with this article.

¹ *Trimble-Weber v. Weber*, 119 Ohio App 3d 402, 695 NE 2d 344, 347 (11th Dist 1997).

Unwanted Data: How to Properly Destroy Data in Hardware

If you have old computers and other office equipment in your law office or home, there is a good reason they are still with you and not in the dumpster. This article will discuss why you should be concerned about the data in your devices and the proper way to dispose of them.

Why It Matters

Oregon Rule of Professional Conduct 1.6(c) requires lawyers to take reasonable steps to prevent the inadvertent disclosure of or unauthorized access to client information. To comply with this rule, you need to make sure client data stored in your computer and other media aren't compromised when you get rid of the devices. This requires you to ensure that data stored on these devices cannot be reconstituted after they leave your control. It's necessary that you permanently wipe data from the devices before donating or recycling them. Disposing of office equipment or devices without first permanently deleting data is an ethical and malpractice risk.

Deleting Files Is Not Enough

When you delete files on your computer and then empty the recycle bin, that operation does not permanently erase the files. Although you can no longer see the files, they are still in the operating system. The files aren't completely gone until you override the space with something else. Even reformatting or partitioning the hard drive will not permanently delete data. That task only erases the location of the data but not the data itself. You need to do more. Unless data on your computer is permanently deleted, it is recoverable using a low-level disk editor or a recovery tool.

Options for Permanent Data Erasure

You have two ways to completely destroy data: (1) use specialized software to overwrite the data or (2) physically destroy the hard drive.

Using Data Sanitization Software

Specialized software tools permanently delete files from your computer by overwriting the information with random data. When this "data sanitization" method is used, overwritten data can never be un-deleted with a file recovery tool. Software programs that permanently delete selected files are called file shredder programs. Software programs that completely erase the entire hard drive, not just selected files, are called data destruction programs. Both programs use different data sanitization methods (such as Secure Erase, DoD 5220.22-M, Gutmann, Random Data) to overwrite data. Some software programs overwrite deleted data only once; others overwrite three, seven, or more times. The more overwrites a program makes, the longer the sanitization process will take.

Whether you should use a file shredder program or a data destruction program depends on your needs. If you are planning to recycle, refurbish, or donate your computer, then use a data destruction program to completely wipe the hard drive. If you are still using your computer but want to permanently delete unwanted files, then a file shredder program is appropriate.

Below is a list of sample file shredder and data destruction programs for Windows.

DISCLAIMER

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials in their own practices. © 2017 OSB Professional Liability Fund.

File Shredder Programs

- **zDelete** (www.zdelete.com) – Has free and paid versions. The paid version offers more features for \$29.00 per license. When you download the program and install it on your computer, a ZDelete Bin will appear on your desktop and replace the Windows Recycle Bin. You simply drag and drop files in the ZDelete Bin, and that document will be completely deleted. User instructions are available at: <http://www.zdelete.com/downloads/ZDelete-User-Guide-11-25-2016.pdf>.

- **Eraser** (<https://eraser.heidi.ie>) – Freeware. Once the software is downloaded and installed on your computer, an Eraser icon will be automatically added to the Windows contextual menus. Just right-click on the file, select the “Eraser” option, and then click on “Erase.” You can also schedule an erasing task to wipe out data on a recurring basis. The default data sanitization method that Eraser uses is Gutmann-35-passes, so it overwrites the deleted data 35 times. This means if you have many files to delete, it might take a while.

- **Freeraser** (www.freeraser.com) – Freeware. Once downloaded and installed, a Freeraser trash bin icon will appear on the desktop. Drag and drop files into the folder to permanently delete them.

- **Other free programs:** Securely File Shredder, File Shredder, Secure Eraser, WipeFile.

Data Destruction Programs

- **DBAN (Darik’s Boot and Nuke)** (<https://dban.org>) – Freeware. Erases hard disk drives (HDDs) in PC laptops, desktops, or servers. Download the program to a CD or flash drive, then boot from it. Follow the instructions on DBAN’s menu interface. The paid version, Blancco Drive Eraser, complies with the Department of Defense data sanitization guidelines, provides a certificate of data removal, and offers more options, including data erasure for solid state drives (SSDs).

- **HDDerase** (<http://cmrr.ucsd.edu/people/Hughes/secure-erase.html>) – Freeware. You can use HDDerase in two ways after you download the program to your computer. The first is to burn the .iso file to a CD and boot from it to erase your hard drive. The download folder includes a HDDeraseReadMe file that has instructions on how to create the boot disk. The second is to install the .exe file in Windows and use it to securely erase data from different devices, such as a USB drive, another internal hard drive, or an external hard drive.

- **CBL Data Shredder** (www.cbldatarecovery.com/data-shredder) – Freeware. You can burn CBL Data Shredder directly to a CD and boot from it to erase the hard drive. You can also install the program in Windows like a regu-

lar program and run it to delete other devices, such as flash drives or another internal hard drive.

- **Other data destruction programs:** KillDisk, MHDD, Format Command with Write Zero Option.

For Mac OS

The Macintosh has built-in secure data sanitization features that permanently delete selected files or wipe the entire hard drive. Secured Empty Trash, available in the Finder menu, deletes selected files and overwrites them with a single pass of zeroes. The hard drive can be wiped out using the “Secured Erase Options” in Disk Utility. There are different security options for erasure depending on the version of Mac OS you are using. Always select the most secure option.

Physically Destroying the Hard Drive

You can also permanently destroy your hard drive by brute force. You would need to open the computer to locate the hard drive, then locate and access the disk platter inside the hard drive. It is the platter (the device that stores most of the data on your computer) that you need to physically destroy. Take the drive outside and use a hammer to smash it to pieces. You could also drill a few holes in the platter just to be safe. Once the drive is physically obliterated, take the parts to any place that recycles electronics.

Alternatively, take your computer to an electronic recycling facility to physically destroy the hard drive. Some vendors allow you to witness the onsite destruction. Two vendors in the Portland Metro area provide this service:

- **SBK Green Century Electronic Recycle**

<http://www.greencenturyonline.net/destruction.html>
2950 NW 29th Ave., Portland, OR 97219, 503.764.9963

- **R.S. Davis Recycling**

<http://portlandrecycling.com/electronics-recycling>
10105 SE Mather Road, Clackamas, OR 97015
503.655.5433

Data in Your Office Equipment

In addition to computers, lawyers also use copiers, scanners, printers, and fax machines in their law practices. It is unlikely that your personal scanner or printer has a hard drive inside. But many multi-functional printers retain an image of the printed, scanned, or copied document and store them in the hard drive.

If you are leasing office equipment, ask the leasing company if the machine has a hard drive and what happens to the data stored on that drive. Also ask whether the machine has a wipe-disk function that can be used to erase data when decommissioning the machine. Review the contract to verify whether and how data are destroyed once the machine is returned to the leasing company.

If you want to get rid of your own office equipment, it's a good idea to open the machine and search for anything that looks like a disk. If there is a disk, remove it from the machine and smash it into pieces with a hammer. Recycle the pieces appropriately.

Data in Cloud Storage and Mobile Devices

Let's not forget data you store in the cloud, your smartphones, and on tablets. Similar to a computer, the cloud server doesn't erase files from its system when you right-click to delete them. These files are merely hidden from you but are still somewhere in the cloud server. Major cloud storage providers like Google Drive, OneDrive, and DropBox have options that purport to permanently delete files from their servers. Some providers will automatically purge deleted files after a certain period of time. It's hard to know whether their "Permanently Delete" (DropBox) or "Delete Forever" (Google) options truly expunge the files from their servers. Make sure you review the provider's user agreement or privacy policy to understand what happens to the files you "delete" or "permanently delete."

As for mobile devices, Apple and Android both have factory reset and remote-wipe functions that erase the devices. Before selling, donating, or recycling your device, make sure you erase all contents and settings. Use the remote-wipe option if the device is lost or stolen.

Conclusion

Protecting client information requires that you securely destroy data stored in old computers and office equipment. You could do this by using software to wipe the hard drive, physically destroying the hard drive, or taking it to a professional to do an onsite destruction for you. Choose a method that is most convenient for you.

HONG DAO
PLF PRACTICE MANAGEMENT ADVISOR