

WINDING DOWN AND WRAPPING UP YOUR LAW PRACTICE

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I. Introduction

Why are you here?

Some are here because they are winding down their practices and need to figure out how to get it done.

Others want to get the CLE credit (heavy emphasis on the coveted ethics credit)

A. 100% of you will be required to wind down your practice eventually

It may be five years from now or 50 years from now. This seminar applies to everyone.

According to the ABA, 25% of you will LEAVE THE PRACTICE OF LAW WITHIN TEN YEARS OF GETTING YOUR LICENSE.

B. There are things you can do NOW to make winding down easier

1. Partnership and firm choices

Who you partner with or associate with makes a HUGE difference in when and how you wind down your practice. If you pick the wrong partner or choose the wrong firm, your wind-down may be a nightmare.

2. Make your firm more valuable now so you can more easily sell it later

Get and keep good clients. Set up good systems. Hire good employees. Be a great lawyer. Profitable law practices are easier to sell than law firms that are not as profitable.

3. Don't hoard

Discard office personal property continuously throughout your career.

C. Caveats

1. All practices are different

I was a collection lawyer. Personal injury, criminal, wills and estates, etc. may be vastly different, but share a lot of the same concerns and issues I address in this material.

2. I am not an expert.

Why listen to me? You can learn from my experience and mistakes.

My experience:

I have attended a seminar on this topic.

A law firm hired me as an associate in 1986 because they had just bought a collection practice.

I purchased a practice.

I sold a practice and the sale fell through.

I have sold and closed on a practice.

I had a “nuclear war” type split of a practice which ended up as a forced sale.

3. I can't cover everything on this topic in an hour.

There are a huge number of details to cover on sale of a practice which cannot be covered in an hour. This could be a full-day seminar to cover all the necessary details sufficiently.

II. When to wind down

A. How did I know when it was time to wind down/quit/retire?

It was time to retire when I woke up every morning and the first thing I said to myself was, “Not again!”

Family- My wife said it was time to retire

Financial Considerations. When you are financially able to retire.

B. When you peak. Don't wait until your health or mental acuity diminishes to impair your ability to practice.

C. Don't keep practicing ONLY FOR THE MONEY

Your motivation needs to be rooted in more than just financial rewards.

III. How not to wind down your practice.

I can't tell you exactly how to wind down but I can tell you how NOT TO DO IT!

A. Don't go “over the wall”

B. Don't steal from your clients, go to jail and die in prison

C. Don't die at your desk

D. Don't take all of your files out of the office in the middle of the night, and start your own firm

E. Don't sell your firm without following the rules (below)

F. Don't get disbarred.

IV. Best way to wind down practice

Selling law practice is like landing a plane.

A. Alternatives to a sale

1. Associates

Hire associates who can become partners and take over when you retire.

2. Have a partner who can take over when you quit.

3. Slowly wind down.

B. Sell the practice

1. Why sell the practice?

It is a quick end compared to a slow wind down. You sell it and it is gone.

Provides continued employment for your staff.

Provides smooth transition for your clients.

2. Issues to be aware of when you try to sell

a. It takes longer than you think it will.

b. You will need to make financial disclosures to buyers. **HAVE A NON-DISCLOSURE AGREEMENT OR CONFIDENTIALITY AGREEMENT IN PLACE BEFORE YOU MAKE ANY DISCLOSURES.**

c. If you sell to a firm outside of Missouri, it gets complicated. Choice of law, ethical rules differences, and legal malpractice policy issues may make terms of the agreement difficult to draft.

3. How to sell

a. Brokers

There are some business brokers that sell law firms.

b. Advertise it yourself

Advertise with The Missouri Bar, SMBA, trade associations, word of mouth, etc.

Consider selling to local attorneys who may want to make a lateral move.

- c. After you find a potential buyer, vet your buyer carefully
- d. Seek out good professional advice.

You need a CPA for tax advice, an experienced transactional attorney who is familiar with sales of law firms, a realtor if you have real estate to sell, a financial advisor, and the applicable insurance professionals (medical, legal malpractice, health and life, etc.).

4. How to set the purchase price

- a. Price is the number one issue when selling the firm.
- b. Price is vastly different depending on the type of practice

- c. Determine what you have to sell

You can't "sell" your clients. "Clients are not commodities that can be purchased and sold at will" (See Comment to Missouri Supreme Court Rule 4-1.17)

You can sell desks, chairs, computers, tables, and other "hard" assets.

- d. You, as the attorney, ARE THE MOST VALUABLE LAW FIRM ASSET. If you retire, you are no longer going to be working there, so the value of the firm goes down proportionately.

- e. There is no set formula to determine value

Some businesses are sold for two times net profit, or three times book value; that does not usually apply to the sale of law practice.

- f. Find comparable sales prices

Find other firms similar to yours that have been sold to compare to what you should set as a sales price.

You want buyer to succeed, so don't overburden buyer with an exorbitant sales price or the buyer may not be able to stay in business and pay the purchase price

5. Terms of payment

- a. Lump sum
- b. Payments over time (e.g. ten-year promissory note, 7% interest, with personal guaranty and lien on assets)
- c. Study tax consequences of capital gains versus ordinary income (especially if you are getting social security income). Draft clause in contract as to the tax

treatment of payments (e.g. capital gains or ordinary income). Ask your tax advisor for the correct contract language and tax consequences to seller and buyer.

- d. Have a provision on who gets paid if you die (See Supreme Court Rule 4-5.4)

V. Missouri Supreme Court Rules On Sale Of Law Practice

A. Why follow the ethical rules? (You are retiring!)

1. If you don't follow the rules, you could get disbarred and not be able to get your license back. Don't burn bridges. You may want to practice law sometime in the future.
2. Following the rules makes for a smooth transition for the clients.
3. If you follow the rules, you can get paid the sales price for purchase of the firm

B. Conditions required for sale of Law Practice

1. What can be sold

Rule 4-1.17 provides that "A lawyer or law firm may sell or purchase a practice, or an area of practice, including good will, if the following conditions are satisfied:

- "(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted, as defined by the agreement between the parties to the sale;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) The seller gives written notice of the seller's clients regarding:
- (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice."

VI. Administrative duties required for winding down law practice

A. Closed files

You must securely store a client's file for six years (ten years if before 2016). Start now including a provision in your attorney fee contract or engagement letter to shorten this time by "informed consent" as provided by Rule 4-1.22 so that you can destroy a file earlier.

Missouri Supreme Court Rule 4-1.22 provides:

"Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client files, which includes written notice to a client as to the location of the client's file"

B. Trust Accounts

Rule 4-1.15(f):

"Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client trust account records." (see further information in the rule on what this includes)

C. Law License Options

1. Keep law license, pay dues, and attend and report the required Continuing Legal Education Credits
2. Election to become inactive under Rule 6.03
You keep law license but can't practice law
No dues required, can elect to pay inactive fee
Can return to Active Status by following Rule 6.06

D. Legal malpractice Insurance

1. Claims-made v. occurrence policy

Malpractice insurance varies on coverage. A claims-made policy covers claims actually made during the policy period, regardless of when they occurred.

2. Legal malpractice "tail" coverage

MALPRACTICE INSURANCE POLICIES CAN VARY SUBSTANTIALLY

Your malpractice carrier should provide malpractice insurance coverage for all claims made after you no longer practice law called “tail coverage”.

Statutes of limitations on malpractice claims can be many years

If you are not covered by legal malpractice insurance, you have a huge potential liability if a malpractice claim is filed. Check your deductible and whether you have “first-dollar defense” on your policy to reduce the attorney’s fees for defending cases filed against you.

Generally, if you get “tail” coverage you are also **REQUIRED NOT TO PRACTICE LAW**. If you continue practicing after retirement, you can continue your malpractice coverage, without tail coverage, until you finally decide to quit practicing.

- E. E-mail addresses, firm names, phone numbers, internet, etc.

After the sale of the firm, many of your clients will continue to contact you via e-mail, text, phone, etc. Maintain and monitor your e-mail and phone so that you can refer new client cases and inquiries to the buyer. Sale of the firm should also include sale of the name of the law firm so clients can continue to find the new firm using the old name.

- F. Become a consultant, adviser, or provide training and support to the buyer

VII. Conclusion

You are never successful until you have a successor!

