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2022 Consumer Practice Extravaganza

Exiting the Practice: Planned and Unexpected

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WELL-BEING




Which is your reality?





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It was a lightbulb moment when the ABA and our profession as a whole stopped ignoring the fact that we cannot be effective lawyers if we are constantly pushed to the brink of no return.

We **MUST** comply with Rule 1.1 by being competent and the first step is to keep our well-being in check.



ABA TASK FORCE ON WELL-BEING

The National Task Force on Lawyer Well-Being's [2017 report](#) shined a spotlight on evidence that too many lawyers face mental health and substance use disorders or otherwise aren't thriving. Wanting to support the effort to catalyze positive change, American Bar Association President Hilarie Bass formed a Presidential Working Group to Advance Well-Being in the Legal Profession in September 2017. Its focus is on helping legal employers support healthy work environments, which are critical for lawyer wellness. Research shows that if workplace cultures support well-being, lawyers will be better able to make good choices that allow them to thrive and be their best for clients, colleagues, and work organizations.



In 2020:

45,979 people
died by suicide
in the United States.

That is 1 death
every 11 minutes.

- ➔ 12.2 million adults seriously thought about suicide
- ➔ 3.2 million adults made a plan
- ➔ 1.2 million adults attempted suicide

Per CDC



**Lawyers are 3.6 times more
likely to suffer from
depression than non-lawyers.**

Krill, Patrick R. JD, LL.M.; Johnson, Ryan MA; Albert, Linda MSSW. The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. Journal of Addiction Medicine: January/February 2016 - Volume 10 - Issue 1 - p 46-52
doi: 10.1097/ADM.0000000000000182



When focusing solely on the volume and frequency of alcohol consumed, more than 1 in 3 practicing attorneys are problem drinkers, the study found.

Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW. The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. Journal of Addiction Medicine: January/February 2016 - Volume 10 - Issue 1 - p 46-52
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CLOSING A LAW PRACTICE

Every state will have its own guidelines and rules.

The following are from the Virginia Bar.

If you do not know your rules, review them this year. You want to be prepared which in turn will reduce the stress of not knowing what to do.



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Guidelines for Closing a Law Practice

Closing your law practice can come as a result of many factors: retirement, merging firms, disability, or an appointment to the bench. All of these different scenarios involve different parameters, but some basic similar premises are involved. A checklist follows that provides some guidance and direction as to the main issues that need to be addressed.

1. Finalize as many 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 time frames 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](#)).



CONSUMER
N O N P R A C T I C E
E X T R A V A G A N Z A

3. For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed. Where appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and to your client.
4. For cases before administrative bodies and courts, obtain the client's permission to submit a motion an order to withdraw as attorney of record.
5. In cases where the client has chosen a new attorney, be certain that a Substitution of Counsel is filed.
6. Pick an appropriate date and check to see if all cases either have a Motion and Order allowing your withdrawal as counsel or a Substitution of Counsel filed with the court.



7. Makes copies of files for clients. Retain your original files. All clients should either pick up 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. If a client is picking up a file, original documents should be returned to the client and copies should be kept in your file.
8. All clients should be told where their closed files will be stored and whom they should contact in order to retrieve them. Obtain all clients' permission to destroy the files after approximately 5 years or acceptable guidelines as set out in LEO 1305. 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. If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your old 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.



10. Call the Regulatory Compliance Department at the Virginia State Bar and update all records as to status and contact information.



Rule 1.17 Virginia Rules of Professional Conduct

Sale Of Law Practice

A lawyer or a law firm may sell or purchase a law practice, partially or in its entirety, 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, except the lawyer may practice law while on staff of a public agency or legal services entity which provides legal services to the poor, or as in-house counsel to a business.
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;



(c) Actual written notice is given by the seller to each of the seller's clients (as defined by the terms of the proposed sale) regarding:

- (1) the proposed sale and the identity of the purchaser;
- (2) any proposed change in the terms of the future representation including the fee arrangement;
- (3) the client's right to consent or to refuse to consent to the transfer of the client's matter, and that said right must be exercised within ninety (90) days of receipt of the notice;
- (4) the client's right to retain other counsel and/or take possession of the file; and
- (5) the fact that the client's refusal to consent to the transfer of the client's matter will be presumed if the client does not take any action or does not otherwise consent within ninety (90) days of receipt of the notice.



(d) If a client involved in a pending matter cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(e) The fees charged clients shall not be increased by reason of the sale.

Be sure to read the comment sections of the Rules.



Rule 1.18

Duties to Prospective Client

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.



(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).



(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

- (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or
- (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
 - (i) the disqualified lawyer is timely screened from any participation in the matter; the disqualified lawyer reasonably believes that the screen would be effective to sufficiently protect information that could be significantly harmful to the prospective client; and
 - (ii) written notice that includes a general description of the subject matter about which the lawyer was consulted and the screening procedures employed is promptly given to the prospective client.



§ 54.1-3900.01. Protection of client interests; appointment of receiver for practice of a disabled, impaired, absent, deceased, suspended or disbarred attorney.

A. Upon a showing that an attorney is unable to properly discharge responsibilities to clients by reason of the attorney's disability, impairment, absence or death or that a suspended or disbarred attorney has not complied with Part Six, Section IV, Paragraph 13 M of the Rules of the Virginia Supreme Court, and that no responsible party capable of properly discharging the attorney's responsibilities to clients is known to exist, the circuit court of any city or county wherein the attorney resides, or in the case of a deceased attorney resided, or maintained an office, upon the ex parte petition of Bar Counsel may issue an order appointing one or more attorneys to serve as receiver with the powers and duties specified in this section. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The court may issue such order if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that by reason of the subject attorney's disability, impairment, absence, or death, the subject attorney is unable to properly discharge his responsibilities to clients; or that the subject attorney's law license has been suspended or revoked and the subject attorney has not complied with Part Six, Section IV, Paragraph 13 M of the Rules of Supreme Court; and that no responsible party capable of properly discharging the subject attorney's responsibilities to clients is known to exist. The Virginia State Bar shall use its best efforts to provide a copy of the petition, affidavits, and notice of the time and place of any hearing to the subject attorney and any known duly appointed personal representative of the subject attorney or the subject attorney's estate.



B. Any receiver so appointed shall be bound by the attorney-client privilege and confidentiality under the Virginia Rules of Professional Conduct with respect to client matters and shall not disclose any privileged or confidential client information without client consent, or as required by court order, or to respond to a Virginia State Bar disciplinary investigation or an investigation by the Virginia State Bar Clients' Protection Fund involving the subject attorney.



C. Any receiver so appointed shall, unless otherwise ordered by the court, (i) prepare and file with the Virginia State Bar an inventory of all case files under the subject attorney's control; (ii) notify in writing all of the subject attorney's clients of the appointment and take whatever action the receiver deems appropriate to protect the interests of the clients until such time as the clients have had an opportunity to obtain successor counsel, and in the case of a deceased attorney, notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered that the receiver may have a claim against the deceased attorney's estate for fees and costs of the receivership; (iii) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject attorney had signatory authority in connection with his law practice; (iv) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (v) attempt to collect any accounts receivable related to the subject attorney's law practice; (vi) identify and attempt to recover any assets wrongfully diverted from the subject attorney's law practice, or assets acquired with funds wrongfully diverted from the subject attorney's law practice; (vii) terminate the subject attorney's law practice; (viii) reduce to cash all of the assets of the subject attorney's law practice, and in the case of a deceased attorney notify in writing the personal representative, if any, of the deceased attorney's estate, and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of any proposed liquidations of assets; (ix) determine the nature and amount of all claims of creditors, including clients, of the subject attorney's law practice; and (x) prepare and file with the court a report of such assets and claims proposing a distribution to such creditors and, in the case of a deceased attorney, notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of the proposed distribution of the receivership funds. Upon the court's approval of the receiver's report, at a hearing after such notice as the court may require to creditors, the personal representative of the subject attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered, the receiver shall distribute the funds in the receiver's control, including funds produced by the liquidation of the subject attorney's law practice, first to clients whose funds were or ought to have been held in trust by the subject attorney, then to the receiver for fees, costs and expenses awarded pursuant to subsection E below, and thereafter to the general creditors of the subject attorney's law practice, including clients whose funds were not required to have been held in trust by the subject attorney, and then to the subject attorney or the subject attorney's personal representative.



D. The court may determine whether any assets under the receiver's control should be returned to the subject attorney or the subject attorney's personal representative during the receivership.

E. Any receiver so appointed shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs and expenses. If there are not sufficient nontrust funds to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the Virginia State Bar has funds available. The Virginia State Bar shall have a claim against the subject attorney or the attorney's estate for the amount paid.

F. This statute is declared to be remedial. Its purpose is to protect the interests of clients adversely affected by attorneys who have either engaged in misconduct or because of disability, impairment, absence, or death are unable to provide legal services for their clients. It is to be liberally administered in order to protect those interests and thereby the public's interest in the quality of legal services provided by Virginia attorneys.

1988, c. 425, § 54-42.01; 1997, c. 239; 2005, cc. 184, 212.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



Exiting the Practice: Planned & Unexpected November 15, 2022

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Agenda

- Succession Planning for Attorneys
- Retirement Checklist
- Actual Unexpected Events

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Succession Planning

- Succession Planning for a future crisis can be difficult for anyone especially busy (and young) lawyers.
- Especially true for sole practitioners
- What if a young attorney dies in a plane crash?
- What if a young or any attorney dies in a car crash?
- Who takes over the client's file?

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Succession Planning

Creating or Updating Succession Plans:

- An important risk management tool, especially for sole practitioners.
 - 2019 annual ARDC report, 75.20% Illinois sole practitioners indicated that they did not have a succession plan.
- COVID-19, succession plan is more important than ever.
- Designate a successor counsel in the event of sudden death, disability or other issue that causes an attorney to not be able to handle their law practice.

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Succession Planning

- Clients can be left abandoned if something unexpected occurs.
- Hotline calls from non-attorney spouses, stressful and difficult time
- Legal Malpractice Claims can develop possibly affecting the estate
- Unethical for another attorney to pick up files without client consent

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Succession Planning

- Pre-emptive client consent for sole practitioners:

Sole practitioners should have one or more designated backup lawyers who will oversee the sole practitioner's law practice in the event of an emergency or unavoidable scheduling conflict.

This includes the occasional scheduling conflicts where the sole practitioner must be in two places at the same time or when the sole practitioner is on vacation.

In addition, a designated back up lawyer is also necessary if the sole practitioner dies unexpectedly, suffers a serious illness or disability, becomes incapacitated, disappears or otherwise cannot attend to client matters.

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Succession Planning

- Pre-emptive client consent for sole practitioners:

The preemptive client consent allows the designated backup lawyer to appear in court for the sole practitioner & to the extent necessary review the client's file and handle the file until the sole practitioner becomes available or a successor attorney is either approved or chosen by the client.

For this limited purpose, the preemptive client consent inserted into an engagement agreement provides that the client waives confidentiality and consents to the other lawyer's appearance and access to the client's file for the purposes of taking appropriate action to protect the client's interests and review and receive the file as a possible successor attorney. The designated backup lawyer should be competent in the areas of law in which the sole practitioner practices.

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Succession Planning

- Law firms should also have succession plans in place in the event a partner is disabled or dies unexpectedly
- Sale of a Law Practice
- ABA Model Rule 1.17 allows for the sale of the law practice in certain jurisdictions. Look for your rule or equivalent in your jurisdiction.

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Retirement from the Practice of Law

- The aging of the attorney population and the Coronavirus pandemic (“COVID-19”) have caused a lot of attorneys to decide to retire from the practice of law. If the attorney is a sole practitioner, the attorney must also close their law practice.
- If a sole practitioner purchases or is provided a retirement Extended Reporting Period (“ERP”)(aka “Tail”) for the most recent policy, the attorney can no longer practice law after the policy expires and during the reporting period provided by the retirement ERP.

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Retirement from the Practice of Law

- ☐ Decide on a date certain to retire within policy period or future policy period
- ☐ Inform staff of retirement plans
- ☐ Contact agent/insurance carrier to discuss Retirement Extended Reporting Period (“ERP”) product
- ☐ Decline taking any new matters
- ☐ Wind down active cases to either close or transfer to new attorney
- ☐ Inform clients of plans to retire and that they need to retain new counsel prior to the retirement date
- ☐ Remind clients of your document retention plan and where files will be stored

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Retirement from the Practice of Law

- ☐ Provide clients any telephone or email information to contact you after retirement
- ☐ Copy client files for storage
- ☐ Return all original documents to clients such as wills, taxes, bank records, etc.
- ☐ Transfer client files to new lawyer(s) and file substitution of counsel motion(s)
- ☐ Provide copies of any files to any client that requests them
- ☐ Notify bar associations and other professional organizations
- ☐ Notify chief judge(s) in any jurisdictions where attorney practices

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Retirement from the Practice of Law

- ☐ Cancel all other memberships and office subscriptions, software, etc.
- ☐ Meet with accountant, financial planner, health agents about plans
- ☐ Audit all law firm accounts both operating and client trust accounts
- ☐ Close law firm operating accounts
- ☐ Close client trust accounts
- ☐ Return any unearned fees or unclaimed client funds to clients
- ☐ Close any firm safe deposit boxes

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Retirement from the Practice of Law

- ☐ Notify post office and any legal messenger services and provide forwarding information
- ☐ Notify telephone companies and provide forwarding number
- ☐ Consult with IT expert as to how to shut-down computer system, store electronic information and shut-down office email, etc. provide that clients have a forwarding email
- ☐ Deal with last unresolved matters prior to retirement date
- ☐ Enjoy retirement

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Actual Unexpected Events

- Actual Unexpected Events and claim examples
- Gus Epps
- Karen Sloat

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Questions

- Questions?

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Gawain Charlton-Perrin is the director of Risk Management for The Hanover Insurance Group's Professional and Executive Lines in Itasca, Ill. He also is a nationally recognized author and lecturer on professional liability, ethics and risk management. Mr. Charlton-Perrin focuses on risk-management for attorneys, architects, engineers and other professionals. Prior to joining Hanover in November 2012, he focused on risk-management for attorneys for another insurance carrier and prosecuted attorneys for ethical violations for the State of Illinois. He later defended attorneys for a Chicago law firm in legal malpractice cases and ethics complaints. Mr. Charlton-Perrin is licensed to practice law in the State of Illinois, the Federal Northern District Court in Illinois and the U.S. Supreme Court. He received his B.A. from the University of Illinois in Champaign-Urbana, his M.A. from DePaul University and his J.D. from IIT/Chicago Kent College of Law.

Gus Epps is a retired lawyer in Richmond, Va. He previously was a partner at Williams Mullen and at Christian & Barton, LLP. Mr. Epps received his Bachelor's degree in American studies in 1970 from Yale University and his J.D. in 1973 from the University of Virginia School of Law.

Nina M. Parker is Of Counsel with Madoff & Khoury, LLP in Foxboro, Mass., and has more than 40 years of experience practicing consumer bankruptcy law. She also founded Parker & Associates in Winchester, Mass. Ms. Parker has been a member of the bar since 1981 practicing in the areas of personal and corporate bankruptcy, specializing in small business and individual chapter 11 plans of reorganization, chapter 13 wage-earner plans and other insolvency options. Since 2002, she has been Board Certified in Consumer Bankruptcy Law by the American Board of Certification. In 2016, Ms. Parker was inducted as a Fellow of the American College of Bankruptcy and in 2019 was named by *Massachusetts Lawyers Weekly* as a Top Woman of Law for her contributions to the practice. In addition, she served as commissioner on the American College of Bankruptcy's Diversity, Equity and Inclusion Commission in 2021-22 and now sits on the Committee formed in 2022. Ms. Parker is a member of the District of Massachusetts Bankruptcy Court Advisory Committee for the Local Rules, as well as the Bankruptcy Court Diversity Initiative Task Force. She formerly served as a member of ABI's Board of Directors on its Education Committee, served on ABI's Civility Task Force and Individual Chapter 11 Task Force, and co-chaired its Consumer Committee. She currently serves on the advisory board of ABI's Northeast Consumer Forum. Ms. Parker received her B.A. from Washington University in St. Louis and her J.D. from New England Law School in Boston.

Karen J. Sloat is a sole practitioner with the Law Office of Karen J. Sloat, APC in Palm Desert, Calif., and has a law career spanning more than 34 years in many practice areas in California, Colorado and Hawaii. She has specialized in labor and employment law for more than 20 years in Riverside County and has handled claims of complex wage and hour violations, discrimination and harassment, employment contracts, trade secret violations, fraud and all other employment-related issues. Ms. Sloat has litigated individual and class-action lawsuits, and has helped employer clients stay in compliance with ever-changing labor laws and resolve pre-litigation disputes. She is admitted to practice in all California state courts and in the U.S. District Court. She also is a certified mediator. Ms. Sloat received her B.A. in theatre arts from the College of William and Mary in 1980 and her J.D. from Loyola Law School in 1987.