
APPENDIX U

CHECKLIST OF CONCERNS WHEN ASSUMING THE RESPONSIBILITY OF ANOTHER ATTORNEY'S PRACTICE WHETHER RESULTING FROM THE PURCHASE OF THE PRACTICE OR TERMINATION OF THE OTHER ATTORNEY'S PRACTICE

The term "Acquiring Attorney" refers to the attorney purchasing the law practice. "Terminating Attorney" refers to the attorney selling or otherwise terminating the practice.

1. Status of Files. If possible, the Acquiring Attorney and the Terminating Attorney should discuss the status of open files – what has been completed, what has not, what has been billed, etc.
2. Consider the overhead costs involved in acquiring a practice or the responsibility for a practice for an interim period.
3. Where the Acquiring Attorney does not have the expertise in one or more of the areas in which the Terminating Attorney practiced, he should refer such matters to other practitioners.
4. Immediately determine responsibility or the lack of responsibility for the IOLA and attorney escrow accounts. Rights and obligations of the Acquiring Attorney must be known – potential liability is significant.
5. Consider and recognize the personalities and practice habits of the Terminating and Acquiring Attorney. For example, if the Terminating Attorney met with clients in their homes or places of business, or if the staff was actively involved in the Terminating Attorney's client relations, etc., the Acquiring Attorney should consider continuing in this same manner or advising the clients of the Acquiring Attorney's practices.

Consider whether to maintain the same fee policy as the Terminating Attorney. If possible, determine in advance whether hourly rates or set fees will be used, and at what amounts; and, whether to use retainer agreements. Disclosure of these items is required under the disciplinary rules governing the sale of a law practice. [see DR 2-111].

7. If time and the Terminating Attorney's condition allow, that attorney should introduce the Acquiring Attorney to nonlawyer staff members, and referral sources such as insurance agents, bankers, realtors, accountants with whom the Terminating Attorney worked. If the Terminating Attorney is not available to assist in this capacity, the Acquiring Attorney should make immediate contact with those individuals, not only for purposes of preserving client relations, but to determine location of clients, history of clients, etc. Many clients work with a team of advisors and with the client's consent, the Acquiring Attorney should have discussions with each of these other professionals.
8. Review and analyze the Terminating Attorney's technology systems for compatibility with Acquiring Attorney's systems. Because of the constant change in technology, the Terminating Attorney or his or her staff should not only participate in transferring over current technology in use, but also should provide access to systems that historically have been used by the Terminating Attorney but which are not kept current. There is a significant amount of client information in the old files and systems.

9. If a sale of the practice, whether by the terminating attorney or the estate, DR 2-111 must be fully reviewed and understood. There are critical notice and time requirements which must be followed.
10. Immediately notify the Terminating Attorney's accountant and/or bookkeeper and schedule a meeting in order to fully understand the financial reporting policy and habits of the Terminating Attorney. If the Terminating Attorney did his or her own accounting and tax preparation, the Acquiring Attorney's accountant should be given immediate access to those books and records that may be available to determine tax and financial liabilities of the Terminating Attorney and the Acquiring Attorney.
11. Contact firms or practices with which the Terminating Attorney was associated to determine whether any files remain with those practices. This will save the Acquiring Attorney a significant amount of time "searching" for files demanded by clients for past representation by the terminating attorney. Also determine who bears the cost and the responsibility for acquiring or copying those files: the Acquiring Attorney, the Terminating Attorney or the court or other agency that has taken over the primary responsibility for the Terminating Attorney's practice.
12. Consider file storage. The older the practice, the more time and expense will be involved in file review and management.
13. Determine whether "closed" files contain valuable documents such as wills, agreements, etc. Practices differ: one attorney's "closed" files may be considered another attorney's "open and continuing" files. For example, an attorney may habitually notify clients following every service that the representation has ceased and closes a file. Others may never take this step and always assume that the client may be coming back for further representation.
14. In returning files, ensure that you are returning files to the "client." Obtain appropriate consents before returning files to individual spouses.
15. Review "vendor" relationships with the Terminating Attorney's vendors to determine whether prepayments were made for services or products that are not going to be used and whether bills are due for storage of files, stationery, supplies, etc.
16. In open estate files, determine whether the Terminating Attorney's practices are consistent with the acquiring attorney's practices with respect to what services are covered on a quoted fee. For example, is a fee for probate limited to just the probate of the will or does it cover estate tax return preparation, will contests, etc. Carefully review retainer letters and send modifications if necessary. Note that the DR's require a notice as to whether the Acquiring Attorney is going to honor the Terminating Attorney's retainer/engagement agreements and arrangements. Arrangements differ. As the Acquiring Attorney, make sure you know what you are agreeing to before stating that you are honoring "all" the arrangements with all the clients.
17. Review accounts receivable when you are purchasing an attorney's practice. You may need to take steps with clients who have a poor payment history.
18. Consider referring a client to another attorney. Know your limitations, both with time and expertise. You need not assume all clients as an Acquiring Attorney.

19. When returning files to clients who have requested them, make a decision as to what you are returning. Will it be everything in the file? Are you responsible for anything in the file for which you will want to retain copies for your own liability protection? Are there documents that should be retained for the benefit of the terminating attorney so that he or his estate could defend any claims against them? Proceed with caution.
20. Continuing liability insurance. If the attorney has died or has retired from practice, reporting endorsement coverage or "tail coverage" should be obtained. In the event of death, the policy may provide reporting endorsement coverage for a period of time at no additional cost.

