

May 2013 *Multnomah Lawyer Ethics Focus*

Winding Down: Transitioning into Retirement

**By Mark J. Fucile
Fucile & Reising LLP**

I recently ran into one of the lawyers I first worked for a long (long) time ago here in Portland. He looked great and is still going strong in full-time law practice. For him, continued full-time practice is a great choice personally and professionally. Others, however, may choose a different path in moving toward and into retirement. In this column, we'll look at two other popular choices from the perspective of law firm risk management: closing-up shop and part-time practice.

Closing-Up Shop

For lawyers retiring from a large firm, the mechanics of winding down their practices often consists of simply transitioning their work to others at their firm. For lawyers with solo or small firm practices, by contrast, the logistics can be more complicated. Solos are truly "closing-up shop." Small firm lawyers may be closing their individual practices without necessarily transitioning their work to others at their firm (if their partners practice in other areas). Although RPC 1.17 permits the sale of law practices, it remains a relatively little used vehicle in part because clients are not obliged to move their work to the purchaser.

The Oregon State Bar Professional Liability Fund has an excellent set of forms and checklists on its web site (www.osbplf.org) that address closing a law

practice generally and retirement in particular. The topics covered range from those unique to law practice (such as closing trust accounts and file retention guidelines) to those generic to any business closure (such as discontinuing telephone service and terminating leases). The utility of the checklists is twofold. First, the checklists underscore the areas where we have specific professional obligations in closing a law practice (such as returning original wills and other comparable documents to clients and filing appropriate substitutions in pending court proceedings). Second, the checklists provide a systematic plan for closing down both the professional and business sides of a law practice (such as client notification letters and getting out final billings).

The PLF web site also has information on “tail” or “extended reporting coverage.” This provides continuing insurance coverage for matters a lawyer handled while in private practice but where the potential claims don’t arise until after retirement. Many excess carriers have similar coverage, too, although the details vary. Tail coverage can be an extremely important element of retirement financial planning.

Part-Time Practice

Part-time practice can offer an attractive alternative to full retirement. For some, it affords a way to continue using the considerable expertise built-up over a career but at a less frenetic pace. For others, it means pursuing a “second act” through work for a non-profit, teaching or simply supplementing governmental or

corporate retirement income with a limited private practice. The variants offer both distinct rewards and risks.

For those who are trying to combine part-time law practice with their outside interests, the difficulty is that the “part-time” matters still need to be handled on a “full-time” basis. In other words, client telephone calls still need to be returned promptly and briefs still need to be filed on time. Similarly, many lawyers use technology to combine part-time practice with travel. Whether communicating with clients from the South Seas or closer to home, Oregon State Bar Formal Ethics Opinion 2011-187 (at 568) notes pointedly that a lawyer’s duty of competent representation includes understanding technology sufficiently to protect client confidentiality through the particular tools being used. Therefore, the free public wi-fi in the local coffee shop that may be just right for sending your former colleagues pictures of your travel adventures is probably not equally right for communicating with a client about an extremely sensitive legal matter.

For lawyers pursuing “second acts” beyond the areas in which they spent their careers, competence has a more fundamental ring: if you are attempting to handle something new, you need to undertake adequate study to learn the area involved or associate with someone who has the requisite experience. For example, a lawyer who spent a career handling corporate mergers will still need to learn the fundamentals of residential landlord-tenant law to meaningfully assist clients in that area at a legal aid clinic. Realizing that our “mile deep” knowledge

in a niche practice is not also “mile wide” is an important start to developing a “second act.”

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar’s Legal Ethics Committee, is a past chair of the Washington State Bar Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB’s Ethical Oregon Lawyer and the WSBA’s Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar’s Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA NWLawyer (formerly Bar News) and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar Advocate and the Alaska Bar Rag. Mark’s telephone and email are 503.224.4895 and Mark@frllp.com.