The CCCBA Senior Lawyers Task Force proudly presents...

#6 TRANSITION IS A MANY SPLENDORED THING!

**Program Panel One**

**What Are Your Overall Abilities as You Age?**
Renee Livingston, Esq. Livingston Law Firm, Speaker Introduction

Speakers: Rebecca Parish, M.D. & Brett Beaver, LMFT, Comprehensive Wellness

- Understand your physical, mental and emotional abilities as you age
- Recognizing your abilities as a key to professional and personal growth
- Interactive Discussion on Maximizing health and well-being horizons

**Program Panel Two**

**What Does Transition Look Like?**
Richard “Dick” Frankel, Esq., Senior Lawyers Taskforce Overview

Speakers: Roger J. Brothers, Esq., Buchman Provine Brothers Smith, LLP
Peter A. Mankin, Esq., Sheldon & Mankin
Mark W. Frisbie, Esq., Retired Attorney

- “Transitionista’s Succession Planning View
- “Transitionista’s Semi-Retired View
- “Transitionista’s Retired View

**Questions & Answers**

**Closing**
**SPEAKER BIOGRAPHIES**

**Dick Frankel** is now happily retired, but his illustrious career spanned thirty-five years of private practice. He did a little criminal defense, a little real estate, a lot of business and employment law. His private practice allowed him to engage in coaching WCYAA baseball (2nd – 6th grade), scouting, teaching, community service projects, and national, state and local bar activities.

*Now there is a new chapter. Often when you think you’re at the end of something, you’re at the beginning of something else. - Mister Rogers.*

**Mark Frisbie** received his law degree from Cornell Law School in 1978 and, after a few years as a government lawyer in Washington D.C., moved back to the Bay Area, where he had lived as a teenager and student at UC Berkeley. He was admitted to the California Bar in 1985 and was a sole practitioner from 1995 until he retired in 2017. He practiced in the inter-related areas of conservatorship, estate planning, probate and trust administration, with special emphasis on the needs of the elderly from his office in Walnut Creek.

**Peter Mankin** has been practicing real estate, business law and mediation in Contra Costa County for more than 40 years. He has been very active in the CCCBA, serving as its President in 1998 and chairing many sections and committees. He is currently a member of the CC Superior Court ADR Oversight Committee, the Discovery Facilitator Committee and the CCCBA Senior Lawyer Task Force. He has been named as a Northern California Super Lawyer in the field of ADR/Mediation. He was recently nominated by the Superior Court for the 2018 “Volunteer of the Year” award.

In 2017, Peter started his semi-retirement “transition” by reducing work hours, phasing out litigation and focusing on mediation and real estate and business transactional matters. He spends most of the summer months working (some) and playing at his “home office” in the White Mountains of New Hampshire.

**Joscelyn Jones Torru**, Attorney A transplant from the great city of Los Angles and a graduate the University of Redlands and UCLA School of Law, Joscelyn has spent the bulk of her 37 years of post-law school employment in the Greater Bay Area, serving the public and communities of Contra Costa, Alameda, and San Francisco and Solano counties.

Joscelyn’s early career in legal services then as a deputy public defender were excellent training grounds for her service years as a Certified Mental Health Hearing Office and then a temporary judge in traffic, small claims, domestic violence/civil harassment, landlord/tenant and now probate cases. Her background also led to her college and law school teaching career and was a perfect segway to her current Estate Planning and Probate practice, where she represents privately retained and court appointed clients. She has served on multiple Contra Costa County bar committees, most recently as ADR section chair and now as a member of the Senior Lawyers Taskforce.

Joscelyn’s hobbies are writing poetry, reading, traveling and being an avid sports fan.
**Dr. Rebecca Parish, MD** has been a John Muir Health Physician for more than ten years. She received her undergraduate degree at UC Berkeley and her medical degree at Tulane University School of Medicine. Dr. Parish completed her Internal Medicine residency at Yale-New Haven Hospital, where she participated in endocrinology and metabolism research.

She is board-certified in Internal Medicine and currently serves as the co-chair of evidence-based physician education for the John Muir Health system. Dr. Parish is on the staff at John Muir Hospital, Walnut Creek Campus. She has a love of teaching and serves as an associate clinical professor at UCSF School of Medicine.

Dr. Parish believes in the value of long-term patient-physician relationships and is passionate about making it easier to establish and maintain those meaningful relationships. She serves as the founder and Medical Director of *Comprehensive Wellness* in Walnut Creek.

**Brett Beaver** is a Licensed Marriage and Family Therapist with over 25 years of experience working with children, teenagers, families, adults and couples. He currently holds the title Director, Therapy Services at *Comprehensive Wellness* in Walnut Creek.

From working in both the public health sector, and private consulting, Brett brings a comprehensive range of best practices and processes to both individual therapy and group facilitation. Brett works with individuals and families to identify the genesis of the challenge, jointly developing strategies and interventions that create a path forward. Brett’s subject matter facilitations address Life Balance, Stress Reduction, and Workplace Communications, to name a few. His approach provokes thought and self-examination with the goal that each attendee leaves with an idea of what they are willing to do differently to improve the quality of their personal and/or professional life.

Brett earned his Master of Science degree from the University of Southern California (USC) in 1982 with a focus on marriage and family therapy.
Reflections on Retiring

Mark W. Frisbie | Dec 01, 2017 | Comments 0

As baby boomers, many of us are starting to plan our retirement. Or at least the dream is there, and it isn’t entirely dependent on that scratcher you just picked up at the 7-11. It’s not as easy as just deciding to retire, though, is it? I mean, we are attorneys. We have fiduciary duties to our clients. We can’t just send out a letter on Monday letting everyone know we are closing shop on Friday, and good luck to you! To that end, here are some thoughts from a recent retiree, Mark Frisbie, at the age of 66:

For me, the decision to retire, including the target retirement date, was made more than 18 months in advance. Because I was a sole practitioner, reducing my load of ongoing cases was an early step, since I had no partners or successors in mind to continue my practice. As early as two years before the target date, I began declining new contested matters, non-terminating trust administrations, conservatorships and guardianships, since I might not be able to finish them before closing my office. I also began taking Mondays off.

About 15 months before my target closing date, I sent a letter to all of my current clients and most of my former ones giving advance notice of my plan to close my office. In that letter, I suggested they review their estate plans and/or finish any pending work before the next year, if possible, and not wait until the last minute. I also mentioned the name of a younger, experienced attorney with whom I shared office space, to whom I could introduce them at our next meeting for continuing representation or referral.

About six months before my target closing date, I searched for and reviewed advisory materials for solo practitioners about office closing procedures. I had saved some of these materials from earlier CLE courses on the subject; others I found on the state bar website. About five months before closing, I mailed another reminder letter to those clients with pending unfinished matters. I made a list of all pending matters in which I was attorney of record in a court proceeding. For those matters that I did not expect to finish by the target closing date, I considered what other attorneys I would recommend to the clients for substitution into the case. I then called the clients to explain the need for substitution, the process for doing so, their right to choose their own attorney, information about my recommended attorney, and I offered to introduce them.

One factor was especially important in choosing referral attorneys: relative youth, with at least five years of experience. I did not want my clients to face the prospect of changing attorneys again within the next 20 years, so I wanted to match them with an experienced attorney that much younger than me. Most of the time that turned out to be Tracy Regli, and from those connections I received an unexpected offer from Acuna Regli to acquire my practice. That made it a whole lot easier to transition to retirement.

Even though I have made the decision to retire, I know there will be things I will miss. Most importantly, I will miss having the opportunity to help both to people wise enough to plan for their own future and friends in the midst of a dispute requiring interaction with the legal system for resolution. Next to the monetary compensation that I needed for self-support, client appreciation was probably the biggest “payoff” for me (if and when it came), followed by the opportunity to try to do some good for my clients and do my small part in contributing to the society from which I receive so many good things.

As I look back on my years of practice, there are some things I didn’t do that I wish I had. For example, I wish I had published scholarly articles, become a recognized expert in my field, done a lot more to teach and/or mentor younger attorneys, and made a fortune without feeling like I was burdening my clients and getting paid more than I was really worth. I just didn’t work hard enough, I guess (tongue in cheek).

For the next several months, though, my plan is to just enjoy a respite from having responsibility for other people’s legal needs. Although I will not be practicing law, I will be seeking other ways to make a contribution to my community. I do not believe that simply enjoying myself will be a sufficiently satisfying purpose for living. So I might do tutoring of underprivileged kids, volunteer as a Court Appointed Special Advocate, or make presentations on end-of-life planning through Advance Health Care Directives and Physician’s Orders on Life Sustaining Treatment and ethical wills. Perhaps I will even look into grand jury service. I believe the pursuit of justice is noble endeavor, and I feel fortunate to live in a society where the practice of law is largely consistent with that objective. There are certainly plenty of other societies where corruption or scarce resources make justice more difficult to achieve.

I also feel fortunate to have practiced in Contra Costa County. We have capable and dedicated judicial and court officers, local bar leadership, and staff. For me, bar association activities have been an important avenue for establishing and maintaining good relationships with colleagues. Having a practice that requires court appearances has also enhanced collegiality with the other attorneys I have met there. I have enjoyed my time practicing in Contra Costa County and a large part of that is the people with whom I was privileged to work.

If I had to leave you with parting words of wisdom they would be this: Mediate, don’t litigate your disputes, if at all possible.

Mark W. Frisbie graduated from Cornell Law School in 1978 and after 15+ years wandering in the wilderness of government regulatory agency, collection and bankruptcy practice as an associate, became a solo proprietor specializing in estate planning, conservatorship, and probate and trust administration. He is a long-time resident of Concord, where he plans to continue practicing retirement since closing his office in May 2017.
Almost 18 months ago, I closed my law office in Walnut Creek. I handled a few remaining nearly-finished cases over that summer, then changed my State Bar license status to Inactive at the beginning of this year. Near the end of last year, I submitted an article entitled “Reflections on Retiring” to the Contra Costa Lawyer, which was published in the December issue. What can I say now, a year or more after retiring?

First, I have absolutely no regrets about retiring when I did, at age 66. That will not be the choice for everyone, of course, and I do not second-guess the decisions of those who choose to work longer, even when not financially necessary. But for me, at this time in my life, I have found ways to spend my retirement time that are more satisfying than serving clients and the justice system, satisfying as that was. Of the three possibilities that I mentioned in my first article, I have done two – classroom assistance at Oakland International High School during Spring Semester, and my on-going commitment as a Court Appointed Special Advocate (CASA) for a foster youth in Contra Costa’s juvenile dependency system, which began at the beginning of this year. The third possibility – making public benefit presentations on end-of-life decision planning – is still very much on my radar. And of course, it is great to have free time for exercise, travel, friends and family, and yes, sleeping late.

Second, I have not moved out of the area nor severed my ties with the legal community where I have lived and practiced for more than 30 years. Though an inactive member, I am now a member of the Juvenile Law Section and the recently-formed Senior Lawyers Section. The latter did not exist when I retired, but it is the reason I am here today, thanks to the leadership of our Bar Association president, James Wu, and Executive Director, Theresa Hurley, and others. And although no longer advising and representing clients on legal matters, I still see the inside of a courtroom at least twice a year as a CASA.

What else have I done with my free time? I audited one class each semester of the 2017 - 2018 academic year at UC Berkeley. I flew out to visit friends in Nashville, TN and Atlanta, GA in September 2017, took a 3-week trip to central Europe in early December, and just returned from a two-week road trip to the Deep South, in addition to some shorter getaways that are annual traditions. I have been fairly involved in church activities. And I love just having time for free reading.

As lawyers, many of us are accustomed to charging for our time at an hourly rate. But what is your time really worth to you. If you do not have to practice law for financial self-support, I suggest you ask yourself why you are doing it (if you are), and how else you might be spending your time. The value of your remaining time in life goes up with each additional year you live.
Roger Brothers, Esq.

**Top Ten Succession Planning Considerations and Issues for Professionals**

In deciding upon and implementing a succession plan for a professional practice or firm, there are many matters to consider and issues to address. From my experience and practice, the following represent the top ten (10) of such considerations and issues.

**Number 10: Identify and confirm the participants in the plan.**

It is important to be able to identify who the key players in your succession plan will be and what roles they will undertake. This process involves, among other things, confirming that the individuals who will be succeeding the professional have both the desire and ability to do so. That is, are they willing to take on the responsibility of stepping into the shoes of the exiting professional and have the acumen necessary to carry out their respective roles?

**Number 9: Decide and agree upon the funding of the plan.**

Once the players are identified and confirmed as viable options in implementing the succession plan, the exiting professional needs to feel comfortable with the funding of the plan. That is, who will be paying what to whom and how and when? Will this be a one-time payout, a fixed amount installment plan, an amount tied to future revenues or profits, or some combination thereof?

**Number 8: Discuss the plan with the key players.**

Even after the plan is agreed upon, it should not be left to gather dust until its implementation. Instead, the exiting professional should discuss the plan with the key players on a regular basis (e.g., quarterly, semi-annually, etc.) in order to (a) re-confirm the commitment of the successors to the plan and (b) reinforce to those key players the commitment of the exiting professional.

**Number 7: Determine the role of the exiting professional.**

Will the exiting professional exit the practice or firm entirely as of day one, or will his/her exit be phased over a period of months or years? Will he/she remain an employee or consultant of the practice or the firm for some period of time? If so, how will he/she be compensated?

**Number 6: Establish a process for the transition of the clients/patients and a narrative for the implementation of the plan.**
The exiting professional and his/her successors need to agree upon the method and timing of transitioning clients/patients/books of business to the successors who will be charged with managing those clients/patients/books of business after the departure of the exiting professional. A narrative should also be developed in order to explain and publicize the reason for and benefits of the transition.

Number 5: **Agree upon the value of the interest to be acquired.**

It is extremely important that all participants in the plan understand as early as possible the exact value of the exiting professional’s interest in the practice/firm and how that value is established (e.g., agreed upon amount, formulaic calculation, appraisal, etc.). Only when the exiting professional and his/her successors are comfortable with the valuation will the plan go forward and have any likelihood of success.

Number 4: **Understand the tax ramifications of the plan’s implementation.**

Depending on the exact structure of the plan, it will have varying tax ramifications for all concerned (i.e., the exiting professionals, his/her successors and the practice/firm). That is, will the payments received by the exiting professional be characterized as capital gains, ordinary income or something else? Will the payments made by the successors be deductible to them or the practice/firm? Many times the individuals involved in succession planning have preconceived notions about how the receipt or payment of monies will be treated for tax purposes. During the planning and development process, the exiting professional and his/her successors should discuss with an accountant and/or other financial advisor exactly how the payments made under the plan will be treated (i.e., what is the net amount of the payments received or made).

Number 3: **Allow for flexibility in the plan.**

As we are all aware, the only constant is change, and as with everything else, circumstances will likely change within the practice or firm, and/or with the exiting professional and/or his/her successors. Therefore, the plan should be flexible enough to accommodate such changed circumstances.

Number 2: **Develop a plan.**

This is a close correlation to Number 3. Professional practices do not necessarily need to develop the plan at the outset; but they should have a plan. Specifically, it is more important to develop some type of plan, even if it is subsequently changed or scrapped altogether for another plan. The mere existence of the plan will promote discussion in relation to the considerations and issues identified in Numbers 10-3, above.

**AND THE NUMBER 1 THING TO DO IN RELATION TO DEVELOPING AND IMPLEMENTING A SUCCESSION PLAN IS: GET STARTED!**
While this may sound simple, it has been my experience that it is not. It is far more convenient to carry on the business of the practice or the firm than it is to tackle the task of developing and implementing a succession plan for the practice or the firm. However, the most successful plans are the ones that are established well in advance of the departure of the exiting professional(s) involved in the plan. As a rule of thumb, this process should start 3-5 years ahead of the planned departure.

Summary.

While there is no guaranty that any particular succession plan will be successful in all respects and for all concerned, two (2) things are, in fact, certain: (1) the absence of any succession plan invites chaos and (2) the consideration and resolution of the items identified in 10-1, above will at least set the professional practice or firm on the right track to planning for and addressing the inevitable departure of professionals from the practice or firm.

Mr. Brothers is a transactional business attorney whose practice includes: general counsel services, including corporate counsel, business and succession planning and debt and equity financing; transactional counsel services, including mergers and acquisitions, entity formation and operation, reorganizations and general commercial transactions; and general counsel to high net worth clients concerning family succession planning including serving clients as "Family Office" CEO.
Guidelines for Closing or Selling a Law Practice

Closing a Law Practice

These guidelines were written because there is a need for them. Many anecdotal stories have been written by surviving spouses and others describing how no one was prepared to close the office and there was nowhere to get help.

Hopefully this checklist will help the lawyer who is voluntarily retiring or who has the time to do many of the things on the list in advance. The checklist may also be of help to those who are called upon to close down a law practice of another where there was no preparation for closing.

When it is Necessary to Close a Law Practice

A law practice may have to be closed permanently or temporarily, completely or partially when a lawyer:

• dies.
• is physically or mentally unable to practice law.
• wants to retire.
• is disbarred.
• is suspended.
• is elected or appointed to public office.
• accepts an employment opportunity, which requires leaving practice
• is drafted or activated into military service.
• is leaving the state.
• is merging practice with another firm and withdraws from certain types of cases (plaintiff lawyer is joining defense firm for example).
• is selling part or all of the practice.
• walks out the door due to "burn out."
• suffers temporary or permanent problems with drugs or alcohol addiction (stress, drugs, alcohol, or money problems).

There may be hundreds or thousands of necessary communications to and from clients, opposing counsel and courts. Staff has to be retained or terminated. Occupancy of the office premises must be dealt with. Record and file disposition must be accomplished. Final tax returns must be prepared and filed and taxes paid.
A. Who is going to do the work?

1. The lawyer, if alive, competent and available.
2. The executor of the lawyer's estate.
3. The conservator or guardian of the lawyer.
4. Another lawyer or firm with whom prior arrangements have been made.
5. The lawyer's surviving spouse, if licensed.
6. Other attorneys, as appointed through the superior court under the auspices of Business & Professions Code sections 6180 and 6190, which lists procedures for the assumption over a law practice.
7. The purchaser of the practice.

B. Why is closing down a law practice any different than closing down any other business?

The major differences are the ethical considerations superimposed on the task that can make the tasks difficult.

Most of the ethical conditions are designed to either protect the confidentiality of client information and/or to prevent other lawyers from offering to help the clients because of solicitation concerns. (See Rules of Professional Conduct, rule 1-400 - Advertising and Solicitation; rule 2-300 – Sale or Purchase of a Law Practice of a Member, Living or Deceased; rule 3-310 – Avoiding the Representation of Adverse Interests; 4-100 Preserving Identity of Funds and Property of a Client; and Business & Professions Code section 6068(e) – confidentiality.

C. Procedurally, what has to be done?

If an attorney dies or is disabled resulting in either the cessation of the law practice or the incapacity to attend to the law practice, Business & Professions Code section 6180 (cessation) or 6190 (incapacity) can come into play if there are unfinished client matters for which no other active member of the State Bar has (with the consent of the client) agreed to assume responsibility.

These two sections authorize the assumption by the superior court of jurisdiction over the law practice and allow for the appointment of attorneys to act under its direction with broad powers granted in order to wind down the practice.

D. Specifically, what has to be done?

8. Get a set of keys to the premises and to interior locked file cabinet and offices. If there is a safe, try to locate the combination.

Make sure to check for “satellite” offices. Ask the landlord for help. Ask the most recent employee for help. Change the locks and combinations to protect the office files and assets.
9. Contact the current or most recent staff to arrange for their employment, (if available) on a full, part time or temporary basis, to help in the closing down process.

10. Open all mail as it arrives to look for information on pending client matters, bills that have to be paid, tax returns that have to be filed, income that may come in, etc.

11. Arrange with the landlord or other entity for both a cancellation of the old lease or tenancy arrangement and the creation of a new arrangement.

12. If there is a known CPA or bookkeeper or file system, try to locate all existing insurance policies, including malpractice, workers compensation, medical, life, general liability, etc.

13. Arrange with the insurance agents or companies involved for a termination of the policies or the issuance of new policies to protect the person(s) or entities closing down the practice.

14. Determine if a "tail" malpractice policy can be obtained to protect the lawyer's estate.

15. Look for checkbooks, canceled checks, bank statements and incoming mail for information on existence of checking accounts, savings accounts and safe deposit boxes. Notify banks. Determine if old accounts must be closed and new accounts opened.

16. Determine which "final" and new tax returns must be filed. Consider federal, state and local payroll, occupancy and sales taxes. Identify federal and state Employer Identification Numbers.

17. Ask local court clerks to run a computer search to determine if attorney is attorney of record on any open matters.

18. Examine all incoming mail to determine open client matters. Be especially alert for documents indicating the possible existence of a successor attorney.

19. Determine if attorney had an arrangement with another attorney (sometimes called a successor attorney) who previously agreed to assume practice of deceased or disabled attorney.

20. Check with surviving spouse or office staff if attorney had a close friend who might have agreed to be a successor attorney.

21. Ask local bar association(s) to send e-mail alerts to members and place a public notice in bar publications announcing death or disability of attorney. The notices should ask for information as to any assuming attorney or attorneys with client matters with the deceased or disabled attorney.

22. Take possession and protect all computers. Get technical assistance if necessary to make a back-up disk or tape in the event something happens to the computer(s).

23. Check to see if there are back up tapes or discs and where they would be located. Take possession of them.

24. Look for desk calendars, computer calendars and secretarial calendars to seek information on cases in process and due dates.

25. There may be lists of clients divided into active files and closed files. These people will have to be notified.

26. Closed files may be kept in more than one location. Closed files may be stored in public warehouses, the attorney's garage or basement, or in the attorney's home or
even with a client. All staff and family members should be quizzed to determine if they know of out of office locations.

27. Closed files must be examined before destruction or returned to clients. The examination of closed files (and open files) raises questions of attorney-client confidence and possible violation of confidence.

In some states only an attorney or someone working under the direct supervision and control of an attorney can look into the file.

In other states a non-attorney spouse or relative or personal representative of the attorney's estate may be able to examine the files.

In some states the attorney for the executor or personal representative can cause the files to be examined. The rules concerning confidentiality vary from state to state.

28. Anything in the closed file that is the property of the client should be returned to the client. Any original document should be removed from the file for return to the client.

Typical items found in files include wills, stock certificates, original signed contracts, promissory notes, deeds, mortgages and other items returned to the attorney's office from a county recorder or governmental filing office.

29. Determine if there is a provision concerning destruction of files in the fee agreement or on closing the file or at any time in the file.

30. Determine if the attorney had a file retention - destruction policy that had been communicated to the clients. There may be special rules for the files of minors. If there are no clear published rules ask for guidance from both the malpractice carrier and the State Bar.

31. The safest way to destroy closed files is simply to shred them or get them shredded. Unfortunately this can be an expensive process. Often lawyers just dump closed files into the trash. This is a risky procedure as many people before destruction handle the trash and the file contents may be of interest to one or more of these people.

32. Depending on the price of paper, some paper recyclers will buy old files by weight. Paper used in law firms has high scrap value. The buyer will both buy the files and haul them away. The files get torn apart as they move down a conveyor belt. The paper is then sorted by type of paper and processed. Take precautions to make sure no client confidences would be violated.

33. Files of unlocated clients pose a special problem. If the applicable statutes of limitations have run and no one has responded to notices, the files probably can be destroyed. Determine if the deceased lawyer's jurisdiction has a place to send unclaimed files.

34. In most jurisdictions, the superior court will have a system for deposit of nonreturnable client wills.

35. Law books may have little or no value unless they are a complete up to date set, and are simply a disposal problem. The law school from which the deceased graduated may accept law books as donations from their alumni.

Other suggestions:

- Check with your local law librarian.
- Contact your local bar association.
• Your public library’s “Friends of the Library” may accept them as a donation to its Annual book sale.
• Ask your local used bookstore.
• A company that rents stage props may be interested.
• Do a Web search for used law book dealers.
• Use an online auction to sell them.

36. With rare exceptions, used law office equipment has relatively little value. You might consider offering the equipment to the staff and give the balance to a charity that will haul it away.

37. Determine who can sign checks on the attorney's client trust account(s). Inform the bank that the account should be frozen. Determine if a non-lawyer can audit the account. Give a sense of urgency to determine which clients are entitled to the money and make distribution to the clients as rapidly as possible. If the superior court has assumed jurisdiction over the practice, get approval through the court for disbursements.

38. For closed offices, notify post office, building management and some nearby offices. Post office forwarding will prevent mail from being delivered and left at an empty office. Request building management and nearby office to collect mail, express deliveries and anything else that might be important.

39. In smaller communities and where appropriate, post a notice on the door for clients who may drop by to seek their file or status of their matter. In the notice inform the client of when and where and with whom contact should be made. Do not do this if you feel the notice would serve as an invitation for a burglar or disappointed client to return and steal or vandalize the office.

40. You might consider placing appropriate notifications on the attorney's Web site.

41. If you can obtain passwords, clear all voice mails that may contain client or other important communications. If passwords are not available disconnect all voice mails for which there is no password and consider using a simple answering machine instead.

42. Arrange for automatic forwarding of all e-mails to a mailbox of the responsible person. It is also possible to reject or answer all e-mails with a notice instructing the sender whom to contact.

43. If a database of client e-mails is monitored, consider notifying clients and others by e-mail notifications. Bad e-mail addresses can be quickly spotted. It may be possible to program e-mails to be notified when the e-mail has been read.

44. Immediately upon making arrangements for a successor lawyer or firm notify all courts, agencies, opposing counsel, etc., of the change in representation by appropriate substitution or other documents. Some court or agencies might require a motion to make the change.

45. If arrangements for a successor lawyer or firm have not been made, it may be necessary to file an appropriate document or letter to the court to prevent a default proceeding or to otherwise protect the client.
46. Non-client records such as: books of account, bank statements, paid bills, etc. can usually be trashed after the necessary time for income tax or malpractice or other laws.

47. Retiring lawyers or successors in interest may not want to devote the time or money to reviewing old client and office files with the attendant expenses of contacting clients.
   Many lawyers just dump the files into boxes with the file names on the outside of the box. The boxes containing the files are then stored in a garage or basement with the hope that the files will never be requested.
   This system seems to work although it would still seem necessary to remove original client documents from files before doing so.

48. Delivering an active file to a client or attorney may be necessary to protect the client's interests. Some consideration must be given to photocopying what is given for malpractice protection. Active files delivered directly to clients must be carefully examined before delivery. Misfiled paper relative to other clients must be recovered. A receipt for the file must be obtained.

49. Examine incoming mail to determine what subscriptions must be canceled. Newsletters, magazines, lawyer listings, legal supplements, yellow pages, web and Internet services, etc. must be canceled.

50. Credit card and check authorizations periodic charges. Many publications and memberships continue unless canceled. Monthly or other periodic charges might automatically be made to a credit card or by charges to a bank account. These must be canceled.

51. Make appropriate notifications to bar associations, professional associations and other organizations. In addition to ending dues billing, the organization may wish to notify others of the death of the member.

**Selling A Law Practice - in Whole or in Part**

These guidelines are just that - guidelines. Every practice situation is different. The urgency or lack of urgency in buying or selling may affect the price. You must also consider the ethical ramifications such as the previously listed Rules of Professional Conduct and Business & Professions Code sections. Hopefully, the lawyer will have begun the process of selling the practice to another lawyer or law firm as part of a retirement plan while there is time for give and take negotiation with a potential buyer.

There are many different techniques used by professionals. An appraiser hired by a seller may consciously or unconsciously use a method designed to set a high price.

Conversely, an appraiser hired by the buyer may try for as low a price as possible. Many of the methods used are intended for large firms, for mergers, or for a divorce court or estate taxes rather than the real world of a lawyer or firm buying or selling a practice.

Since few, if any lawyers regularly buy or sell practices, the lawyer rarely has any expertise or experience in setting the price or terms for his or her own practice. A lawyer buying or selling a law practice is well advised to get help.

It may be helpful to examine Internet listings and descriptions of practices for sale. A visit to [http://www.SeniorLawyers.org](http://www.SeniorLawyers.org) may be helpful.
A Multiple of Fee Income. This is relatively simple and reflects what is really happening in the world, but there are other methods used by professional appraisers that are not described in this checklist.

1. Average the fee income over the previous five years by category of fees. A five-year average will hopefully balance out the highs and lows. It is necessary to classify the type of fees. Fee income from trusts and a safety deposit crammed full of original wills may be much more valuable than fee income from criminal law cases which depended on the selling attorney who personally had the skill and reputation that caused the phone to ring.

2. Examine the sources of the clients. Do the clients come from referrals to a specific lawyer? Do the clients come due to the firm, the firm’s expertise or the expertise of a specific lawyer in a particular area of law? Do the clients come from institutions that are likely to continue referring clients when the selling lawyer closes or retires? Do they come from yellow pages or the Internet?

3. Examine the areas of law that are the sources of the fees. Are they in growth areas such as mediation, arbitration and elder law as opposed to medical malpractice or other areas that could likely be capped by legislatures?

4. Determine if the selling attorney can remain during a time period of from 6 months to 1 year or more.

5. Determine if the support staff with knowledge of the clients and matters will remain.

6. Look at the net income after expenses. Typically, net income after expenses will run 40 to 50 percent of the income. If the income percentage is lower, the practice may possibly not support higher fees and may depend on high volume and turnover. If the percentage is higher, it is possible that the lawyer is working long, hard hours without adequate support, staff or equipment.

7. Start with a figure of six times the average monthly gross fees. Increase the multiple or decrease the multiple, keeping in mind all of the various factors. A corporate or business or probate practice with the departing lawyer staying on for three to six months to meet and introduce clients may be worth 12 - 15 times the monthly average. The criminal law practice of a deceased lawyer may only be worth as little as one or two months the average income, or may have to be given away to avoid ongoing expenses.

8. Determine if the seller is willing to guarantee an amount of fee income from existing and previous clients and referrals.

9. Determine an appropriate adjustment to price and terms if it should be made six months later, twelve months later or at any time based on going over or under the guarantee income figure.

10. Return on investment, or capitalizing net profit is another method used.

11. "Hard" assets including books, computers, computer systems, telephone systems and office furniture may have little or no value beyond their book value. Liabilities on rentals or contract payments must be taken into account. This amount is in addition to the multiple amounts.

12. "Soft" assets including cases in process with partially earned or contingent fees must also be valued. This amount is also in addition to the multiple amounts.
13. Contingent fees based on results. It will probably be impossible to ethically divide actual fees between a successor lawyer and an executor or spouse or non-lawyer. This is a major incentive for a lawyer to sell before death or disability. Sometimes a system of dividing fees on earnings can be effectuated.

Get Help. This checklist will help you get started. Get help from a lawyer and appraiser. You can't be objective enough alone.

There are several Web sites that can assist you in finding the help you need. One such site is www.SeniorLawyers.org.

Every practice and situation will be unique to the facts of the situation. There are hundreds of possible factors that could affect a price of a practice. There will be many expert appraisers, accountants, lawyers and others who will find fault with what is set forth here and who will feel they have a better system, or method, or formula.

**Other Contract Terms to be Considered**

The previous 13 points deal primarily with determining price. The following points are some of the terms that should be covered in the agreement between the parties.

14. List of "client accounts" to be used for determining price and price adjustment.
15. Warranty that every "client account" has a written fee agreement in the file.
16. List of assets being transferred.
17. List of assets NOT being transferred.
18. Obligations being assumed.
19. Obligations not being assumed
20. Lease status. Assumability or assignability
22. Basic purchase price before adjustments.
23. Definitions of "income" to be used in determining adjustments.
24. Adjustments based on actual income from client accounts at specific points in time.
25. Payment of purchase price. Down payment, monthly payments, adjustments to payments, retention or hold back if any.
26. Covenant(s) not to compete as permitted by law and agreed to by buyer and seller.
27. Guarantees by third parties.
28. Income not included as transfer (sublets investments, etc.).
30. Work in process. Determine what amounts go to the buyer and seller.
32. Responsibility for closed files and destruction of closed files.
33. Transition assistance. Compensation rates for specific assistance.
34. Status of errors and omissions, insurances and claims, and possible claims.
35. Identify employees who may not be selected. Penalty for hiring employees.
36. Manner of use of name(s) of attorney names.
37. Dispute resolution. Which items are to be resolved by mediation, arbitration, or litigation?
38. Specify which person or institution is to mediate or arbitrate disputes.
39. Consent of spouses where appropriate.
40. Review of terms by ethics attorney(s).

As indicated, these are just some of the possible terms to be included in an agreement of purchase and sale of a practice — which should be expanded or contracted as appropriate to the practice and attorneys involved.

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