

CCCBA Senior Section proudly presents...

Closing Your Office: The Ethics of It & the Challenges of Moving On

Carol M. Langford, USF Adjunct Professor, Law Offices of Carol M. Langford

Julie A. Levin, MA, MFT, Julie A. Levin Therapy & Counseling

George E. Chaffey, Littler Mendelson, recently retired

Hon. Richard S. Flier (Ret.), ADR Services, Inc.

AGENDA

- I. Introduction: Hon. Richard S. Flier (Ret.)
- II. Ethical Obligations of Closing Your Office: Carol M. Langford, Esq.
 - a. Succession Plan---Needed
 - b. Succession Plan---Core Elements
 - c. Designate Succession Attorney---Why & How
 - d. Succession Attorney access to IOLTA & Operating Accounts
 - e. Bar involvement if no written succession agreement
 - f. Conclusion
- III. Creating & Exploring Interests before you retire: George E. Chaffey, Esq.
- IV. Life after Law---questions, concerns, worries: Julie A. Levin, MA, MFT
- V. Blue Zone: “blueprint” for joyful, healthy longevity
 - a. Community and laughter
 - b. Physical Health through diet and movement
 - c. Creativity and Meaning
- VI. Anticipating what you might miss.
 - a. Dopamine high from winning, competing, succeeding.
 - b. Structure, deadlines, built-in community, etc.
 - c. Sense of identity
- VII. Things to begin today.
 - a. Explore interests and relationships outside of work.
 - b. Learn to listen inward, especially to emotions and sensations.
 - c. Practice doing things that bring you joy, especially things that are just for you and have no productive value in the world.
- VIII. Final questions/managing specific scenarios.

 Contra Costa County
Bar Association

**2023 MCLE
SPECTACULAR**



**Refresh &
Reimagine**

PROGRAM MATERIALS

GUIDELINES FOR THE RETIRING LAWYER
CONTRA COSTA COUNTY BAR ASSOCIATION

CAROL M. LANGFORD

CLANGFORD.COM

APPLICABLE RULES OF PROFESSIONAL CONDUCT:

1.1, 1.3, 1.4, 1.7, 1.15, 1.16, 1.18, 5.1 AND 7.1

BUSINESS AND PROFESSIONS CODE SECTIONS:

6003, 6068, SUBDIVISION E (1), 6180, 6190 and 6185

CODE OF CIVIL PROCEDURE:

SECTION 284

CALIFORNIA UNCLAIMED PROPERTY LAW:

SEE THE CALIFORNIA SECRETARY OF STATE WEBSITE FOR ESCHEAT PROCEDURES FOR TRUST ACCOUNT MONIES THAT CANNOT BE ACCOUNTED FOR.

ETHICS OPINIONS:

THE STATE BAR OF CALIFORNIA STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT FORMAL OPINION 20-0002 AND 2014-190 AND ABA 92-369

PUBLICATIONS:

GUIDELINES FOR CLOSING OR SELLING A LAW PRACTICE - AVAILABLE ON THE STATE BAR OF CALIFORNIA WEBSITE. SEE ALSO THE ABA SENIOR LAWYER'S ORGANIZATION FOR ADDITIONAL MATERIALS.

NOBC-APRL JOINT COMMITTEE ON AGING LAWYERS FINAL REPORT

PRACTITIONER'S CHECKLIST FOR THE SALE OR CLOSING OF A LAW PRACTICE FROM THE TRUSTS AND ESTATES SECTION OF THE CALIFORNIA LAWYERS ASSOCIATION

A WELLNESS GUIDE FOR SENIOR LAWYERS AND THEIR FAMILIES, FRIENDS AND COLLEAGUES – THE STATE BAR OF CALIFORNIA

HANDBOOK ON TRUST ACCOUNTING FOR CALIFORNIA LAWYERS – THE STATE BAR OF CALIFORNIA

ETHICAL GUIDE TO SUCCESSION PLANNING

The premature closing of a law office can result from an unexpected disability, death, disappearance, or discipline of an attorney. The failure to plan adequately for the unexpected can result in harm to the client and in confusion and hardship for the attorney's family, staff and professional colleagues. In addition as attorneys retire a succession plan is required to ensure a smooth transition to retirement.

Developing a succession plan in advance ensures the orderly transfer of a client's matters and files to a new attorney, as well as return of moneys held in trust and satisfies the attorney's ethical obligation to provide competent and diligent representation.

This guide charts a path for an attorney to facilitate the transition of open client matters to new attorneys or a successor attorney appointed in advance by the affected attorney. It also addresses what can happen when an attorney does not prepare a succession plan and the State Bar becomes involved with the attorney's practice.

I. Is An Attorney Required to Develop a Succession Plan

While there is no professional obligation requiring an attorney to have a succession plan, prudent attorneys should have one in place. Attorneys owe fiduciary duties to their clients: duties of loyalty and confidentiality and the duty to perform services competently. California Rule of Professional Conduct 1.1 and 1.3. Attorney competence includes anticipating events or circumstances that may adversely affect client representation. (See Rutter Practice Guide, *Professional Responsibility*, 6:24.3) Practice interruption may affect an attorney's fiduciary obligations to his/her clients and produce harsh consequences. An attorney without a succession plan may face State bar discipline and legal malpractice exposure.

Although representation normally will terminate when the attorney is no longer able to adequately represent the client, the attorney's fiduciary obligations continue beyond the termination of the agency relationship. See ABA Formal Opinion No. 92-369.

II. What Are the Core Elements of a Succession Plan

The type of practice determines the elements of a succession plan. Mid-size and large firms with multiple attorneys do not experience issues regarding file transfer

and attorney-client privilege and confidentiality that a solo or small firm practitioner faces . It is suggested that every solo or small firm attorney should have a written succession plan that includes detailed instructions to members of the attorney's immediate family, a designated successor attorney, the attorney's estate planning representative and key office staff.

The following are core elements of a comprehensive plan:

1. A written agreement with the designated successor attorney.
2. Information regarding the status of open client matters including contact information for the client and the location of the client files.
3. A copy of the attorney's client file retention policy.
4. Details concerning the IOLTA account, operating account and other bank information .
5. The location of log-in and password information for bank accounts, computers, mobile devices, voicemail, cloud storage, billing systems, calendaring system, email and other websites the attorney regularly uses.
6. The location of accounts payable and receivable information.
7. Contact information for office personnel and key vendors.
8. Detailed information about office lease, insurance, and leased equipment.

Corporate Entity Considerations

If the affected attorney is the sole member of a LLC or LLP, the LLC or LLP must pre-authorize someone other than the sole member to act on behalf of the entity and carry out the succession plan in the event of the member's death or disability. The corporate entity must have a resolution in place that states when and how the successor attorney may act on behalf of the entity after the death or disability of the member.

III. Why Designate a Successor Attorney

The succession plan should include the designation of a competent and diligent attorney to act as the successor attorney. Some malpractice insurance carriers may require the designation. A successor attorney is typically granted authority by the affected attorney to inventory the affected attorney's files and make determinations as to which files need immediate protective actions. In addition, the successor attorney is typically responsible for notifying the affected attorney's clients. See ABA Formal Opinion 92-369. The designation of a successor attorney will ensure client confidentiality and prevent malpractice if an attorney is temporarily disabled.

(eg file to protect a statute of limitations or other filing deadline). An ideal candidate is someone the affected attorney knows and trusts and who practices in the same field and geographic location.

IV. How Do I Designate a Successor Attorney

A written agreement between the affected attorney and the successor attorney is essential to memorialize the arrangement and include duties and responsibilities. Suggested key provisions of the agreement should include the following:

1. Authority to access the client's matters (eg within 24-48 hours after death or disability) and determine those matters which need protective action.
2. A provision concerning confidentiality to authorize the review.
3. Authority to carry out immediate protective action including communication with courts and opposing counsel.
4. Authority to notify clients concerning death or disability. (a draft letter can be prepared in advance for the successor attorney to send to clients)
5. Authority for the successor attorney to access and serve as a signatory on the attorneys IOLTA and operating accounts.
6. Any compensation that will be paid to the successor attorney for his/her services.
7. Indemnification of the successor attorney by the practice or the estate of the deceased attorney
8. Termination of the agreement.

V. How will the Successor Attorney Access My IOLTA and Operating Accounts

Advanced planning can avoid issues that may arise concerning the successor attorney's need to access the trust and operating accounts. The affected attorney should contact his/her bank in advance to determine what documentation it will accept for transfer and/or signature authority on these accounts. Methods of possible documentation include: a power of attorney, a copy of the written agreement between the successor and affected attorney permitting access, a probate court order or pre-signed designation forms provided by the bank.

Under the written agreement, the successor attorney should make every reasonable effort to identify clients who have funds on deposit in trust and contact the clients to return any funds to which they are entitled.

VI. What Happens If There is No Written Succession Agreement/Plan-State Bar Involvement under Business & Professions Code

A significant interruption in an attorney's practice may provide a sufficient basis for the State Bar to petition the Superior Court to assume jurisdiction over an attorney's practice under Business & Professions Code Sections 6180 (cessation) and 6190 (incapacity). The court will assume jurisdiction to protect client interests and if there are unfinished client matters for which no other attorney has agreed to assume responsibility. The State Bar and the Superior Court have the authority to take over management and control and to close the practice. See Business & Professions Code Sections 6180/6190. Although the Court may appoint an attorney, the process often involves a State Bar attorney who takes over and manages the practice until it can be closed. The appointed attorney can examine files and records, obtain information on pending matters that require attention, notify clients and inform them it may be necessary to obtain other legal counsel. See Business & Professions Code Section 6180.5. In addition, until new counsel is obtained, the appointed attorney has the authority to control all operations and bank accounts of the practice.

Since the attorney appointed is working under the auspices of the Superior Court, he/she will not be liable to a particular client if there is any harm resulting from the death or disability of the affected attorney. Business & Professions Code Section 6180.11.

If the Superior Court becomes involved there are serious obstacles that a recovering or recovered attorney faces. Once the Court proceeds under Business & Professions Code Sections 6180/6190, the attorney is automatically placed on inactive status and must seek reinstatement to resume practice. See Business & Professions Code Section 6007(b)(2). Reinstatement depends on the attorney's ability to prove that he/she is competent to practice. Once reinstated, the attorney must petition the Superior Court to terminate jurisdiction over the practice. Business & Professions Code Section 6190.6.

VII. Conclusion

The best recommendation is to plan ahead so that succession of an attorney's law practice or its closing can be handled with the least amount of stress and chaos associated with unexpected events. If an attorney is retiring, a succession plan will ensure a smooth transition into retirement.

About the Author: Lorraine M. Walsh is an attorney who has practiced in California for 40 years and maintains her office in Walnut Creek. She is a State Bar certified specialist in Legal Malpractice Law and handles controversies involving attorneys and clients. She also serves as an expert consultant and witness in legal malpractice cases. As part of her practice she represents clients in appeals and has four published appellate opinions. She is the former Chair of the State Bar Mandatory Fee Arbitration Committee and trains attorneys throughout the State to serve as fee dispute arbitrators for local and the State Bar programs. In Contra Costa County she is Past President of the Bar Association Senior Section and currently serves on its Board. She is the current co-chair of the Bar association's magazine, the Contra Costa Lawyer. Finally, she volunteers as a Judge Pro Tem in Contra Costa County Superior Court.

Senior Section: Closing Your Office---The ethical obligations of leaving your practice. The challenges of moving on.

Speakers' Bios

Carol M. Langford is a lawyer in the San Francisco Bay Area. She specializes in giving advice on legal ethics and discipline to attorneys, judges, law firms and corporations. She also represents lawyers and law students before the California State Bar in disciplinary and admissions matters. She serves as a national expert witness in the ethics area. She was formerly a partner in the international law firm of Carroll, Burdick & McDonough where she was ethics advisor to the firm.

Ms. Langford has served as a member/chair of numerous California State Bar and American Bar Association committees including those dealing with Ethics, Intellectual Property and Law Practice Management & Technology. She was appointed to the Commission for the Revision of the Rules of Professional Conduct. She assisted in drafting the current Rules of Professional Conduct and served as the Chair of the Disciplinary Standards Task Force.

She has also worked as an Adjunct Professor (Ethics) at USF, UC-Berkeley Law, and UC School of Law, San Francisco (Formerly Hastings College of the Law).

Among her publications are *Legal Ethics in the Practice of Law, 4th Edition* (Lexis Law Publishing) and *The Moral Compass of the American Lawyer, Truth, Justice, Power, and Greed* (Ballantine)

Email: Langford@usfca.edu

George E. Chaffey recently (2022) retired after working for 40 years at Littler Mendelson in Walnut Creek. His primary focus was helping government contractors develop affirmative action plans and provide advice on surviving Federal OFCCP audits. He also provided advice on Corporate Diversity and Inclusion programs. His work with companies included statistical analysis of employment activities such as hires, promotions, terminations, and layoffs. He would also provide regression analysis of compensation data. He was former Chair of the Law Practice Management Section of the State Bar and was founder & Chair of Littler Nationwide OFCCP Practice Group.

Mr. Chaffey began his legal career teaching law at the Grimes School of Law, University of Liberia in Monrovia, Liberia as a Peace Corp volunteer. Upon returning to the United States, he worked for 13 years at the Contra Costa Legal Services Foundation. This included the last five years as the Executive Director.

George Chaffey is very active as a Rotarian at the local, regional, national, and international levels as an administrator (Club President and District Governor) as well as a trainer. This includes serving as the World President of the International Fellowship of Flying Rotarians. He has lectured widely in his field of legal expertise, and throughout his career regularly published articles in the employment and OFCCP field.

Email: gchaffey@comcast.net

Julie A. Levin, MA, MFT, is a licensed Marriage and Family Therapist. She helps people listen to their internal rhythms, curiosity, and values, instead of seeking belonging or approval based on the socializing forces of culture. This work is especially important as people transition into retirement---a time when it's natural to struggle with identity and meaning. It's also a time of opportunity---often the first time in life when people have the freedom to discover what matters most, what actually brings joy, and what makes them feel engaged and enlivened.

Julie has been in practice for over 20 years, and now works four days on and ten days off, spending her leisure time hiking, gardening, writing poetry, and doing art projects. Since turning 50, she has published a volume of poetry, *Walking on Water*, and a workbook, *After 40: Meaning of Life Journal*.

Email: therapy@julielevin.com

Richard S. Flier is a neutral working for ADR Services, Inc. in San Francisco as a mediator, arbitrator, and court-appointed referee for the past 18 years. He served as a Superior Court Judge in Contra Costa County for 20 years before switching careers. Prior to his election to the Bench in 1984, Flier was a Deputy District Attorney in Contra Costa County for 11 years. His initial work out of law school was as a Hearing Examiner for the State Office of Administrative Hearings.

Flier is the Chair of the California Dispute Resolution Council as well as the Senior Section of the Contra Costa Bar Association. He is also a board member of the CCCBA Foundation.

Email: rflier@adrservices.com