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# **ETHICAL ISSUES FOR DEBTORS COUNSEL**

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## **Closing Down a Practice**

There can be any number of situations where a consumer bankruptcy attorney's practice closes down. Closing down a practice, or stepping in to close down the practice of another lawyer, raises a host of issues. Common situations that require closing down a practice include:

1) The best case, an attorney is leaving a bankruptcy practice and the associates or partners in his firm take over the representation. The difficulty in a consumer bankruptcy context is that most consumer bankruptcy practitioners practice alone, so this will not often be the situation.

2) The attorney transitions to a new practice area or is appointed as a Trustee or Judge. Another good situation, the attorney has lots of lead time and can orchestrate a smooth transition.

3) A "not so bad" case - an attorney is leaving a bankruptcy practice and he notifies his existing clients and makes arrangements for another attorney to take over his cases. Clients are given the option of locating their own new Counsel or going with the Counsel suggested by the retiring practitioner.

4) An attorney is forced by external events (Court, SBOT) to leave the bankruptcy practice. This can mean only a few weeks to wind down. Compounding the issue is that the attorney may feel little motivation to assist existing clients since one of them may have instigated the circumstances that led to the forced exit or an unpleasant circumstance in the life of the attorney may leave them with little desire to address issues in their practice.

5) An attorney has a "life event", for example, death, stroke or a major illness that forces a sudden closure of their bankruptcy practice. Clients may not even know that something has

happened to their lawyer. Often the attorney is not able to assist with the transition and staff or other attorneys are left to address the situation.

The discussion below addresses Client transition issues that arise in the last two scenarios above. This discussion is not about a situation where a firm continues after the lawyer's departure or a situation where there is time for an orderly transition. It is also not about taking responsibility for closing the practice of another attorney or a situation where the District Court assumes jurisdiction over a practice pursuant to Part XIII of the *Texas Rules of Disciplinary Procedure*. Instead, this discussion focuses on closing down a practice when that decision arises suddenly; i. e. is not the result of careful long-term consideration and there is limited time for action. Thus it focuses on what to do when the imminent closing of a practice cannot be avoided and how to manage that transition.

For a lawyer in one of these situations, particularly one that practices outside a firm, as most consumer practitioners do, it is critical to take affirmative action to address the situation. Simply "walking away" from the practice is almost certain to mean grievances and the resulting loss of a law license as well as malpractice claims and judgments. Even if these do not seem like big problems at the time (i.e. the attorney is finished with practicing law and judgment proof) the attorney may still subsequently regret not paying more attention to the transition. A bit of effort at the time of the transition can greatly improve the outcome. My suggestion is that the first resource to consult is the free "Closing a Practice" information found on the website of the State Bar of Texas – Law Practice Management Program: <http://texaslawpracticemanagement.com> .

Like most things in a practice, it would be best to consider these issues beforehand and develop a defined plan of how to close down the practice in various situations. Such a plan should include a list of current clients, a password list, banking information, a schedule of

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