

Ethics & Issues

by Carole R. Richelieu,
Chief Disciplinary Counsel

Thinking about retiring from the practice of law? More is involved than just closing the doors and taking that long awaited cruise. Closing a law office takes time and planning, just like retirement.

First, a retiring attorney must provide adequate notice to all active clients of the impending retirement and the need to retain new counsel. HRPC 1.16(d) (termination of representation). What is adequate notice? Sufficient notice such that the client is not prejudiced by the withdrawal from representation and has a reasonable amount of time to retain new counsel. In the event a case is pending in court, court permission to withdraw from representation must also be obtained. HRPC 1.16(c). Whether the retiring attorney wishes to recommend successor

counsel is a personal decision with possible legal ramifications, such as negligent referral; however, the attorney cannot "sell" clients to successor counsel to add to the retirement nest egg. Successor counsel is solely the client's choice. See generally our December 2001 Hawai'i Bar Journal article (clients' rights).

Second, a retiring attorney must refund any unearned fees and costs to the client. HRPC 1.15(f)(4); HRPC 1.16(d).

Third, a retiring attorney must return the client files to the active clients or designated successor counsel. HRPC 1.15(f)(4); HRPC 1.16(d). With regard to closed files, the former clients should be contacted and asked whether they wish their files to be returned. If the former client does not want the file back or cannot be located after diligent effort, destruction of the file must be preceded by a careful examination to ensure that

the file contains no original documents or materials which might prove helpful to the client at some future date or the destruction of which might harm the client. These documents and materials should not be destroyed even if the attorney retires. The attorney should seek to either store these documents or place them in an appropriate depository, such as the probate court if permitted. Thus, the best practice is to never maintain originals in client files - return them to the client as soon as practicable after the attorney-client relationship ceases. Otherwise, an attorney can end up storing documents for a long time after retirement at his or her own expense. Records should be kept of any file destruction, and the method of destruction must preserve client confidentiality which, of course, continues after the representation ends. HRPC 1.6(a).

Fourth, the retiring attorney must retain his or her books and records

Precise Measurement of Money.

Defensible calculations of damages are only achieved through precise analysis. Bowen Hunsaker & Company provides forensic accounting and expert witness services in all aspects of litigation financial analysis. Hawai'i's largest law firms and financial institutions have turned to Bowen Hunsaker & Company's expertise for over 15 years.

**Bowen
Hunsaker
& Company**

Chartered Public Accountants and Consultants

735 Bishop St., Suite 2020, Honolulu, Hawaii 96813 Telephone: (808) 526-2020 Fax: (808) 526-1024 www.bhco.com

regarding funds, securities, and other properties of a client or third person for at least six years after completion of the employment to which they relate. HRPC 1.15(g). Thus, provision must be made for storage of: cash receipts and disbursements journals for each trust and business account; subsidiary ledgers; copies of retainer agreements; copies of statements to clients; copies of all bills to clients; copies of records showing all payments for services performed by persons not in the attorney's regular employ; all checkbooks, check stubs, bank statements, canceled checks (or access to checks), and deposit slips (or access to slips); copies of all monthly trust account reconciliations; copies of all records showing the quarterly reconciliation of trust accounts; and records showing all non-cash property held in trust.

Should an attorney wish to retire by selling his or her law practice, HRPC 1.17

imposes many conditions on such a sale, recognizing that the practice of law is not a mere business. This Rule should be carefully studied if such a sale is contemplated.

Discipline Notices

Upon petition by the Office of Disciplinary Counsel pursuant to RSCH 2.15 (reciprocal discipline), the Hawaii Supreme Court imposed a 21-day suspension upon **PAUL D. EDMONDSON** effective October 27, 2003, for misconduct that occurred in Washington.

Edmondson practiced law while he was suspended from the practice of law for nonpayment of dues and failed to adequately supervise a non-lawyer employee. He was suspended by the

Supreme Court of Washington for 21 days with conditions attached to the suspension. They included providing legal services to clients who paid fees that were allegedly embezzled by his office assistant or refunding the actual fees paid and making similar arrangements with any affected clients about whom he learns in the future.

Edmondson appropriately provided the Office of Disciplinary Counsel with notice of his Washington suspension.

Edmondson, 60, is a graduate of California Western School of Law and was admitted to the Hawaii bar in 1996. He currently is on voluntary inactive status in Hawaii.

We understand that you need to protect more than your practice.

As an attorney you have plenty on your mind, but it's not all business. You have family, friends and a private life you value.

At ALPS, we've been protecting attorneys from professional liability claims for 15 years and have never left a jurisdiction in which we do business. We let attorneys pay attention to their business.

And their lives.

 **ALPS**
Attorneys Liability Protection Society
A Risk Retention Group

www.alpsnet.com
1 (800) FORALPS

