



WSSFC 2025

Practice Management Track – Session 7

The Exit Strategy: Succession Planning for Small Firm Lawyers

Presenters:

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About the Presenters...

J. David Krekeler of Krekeler Law, S.C., devotes his practice to solving financial problems for Wisconsin businesses and individuals. He is a past chair of both the Bankruptcy, Insolvency and Creditors' Rights Section and the Solo & Small Firm Section of the Wisconsin State Bar, as well as the Western District of Wisconsin Bankruptcy Bar. Only six Wisconsin lawyers are certified as business bankruptcy specialists, and David has been one of them for many years. He is past chair of the Bankruptcy Insolvency and Creditors Rights section of the Wisconsin State Bar, as well as the Western District Bankruptcy Bar Association. He is also past chair of the Solo and Small Firm section, and the 2021 recipient of its John Lederer distinguished service award. He has been selected as a Super Lawyer every year for at least the last 17, as well as being included in the Best Lawyers of America during those same years. He recently published his first book, "Bankruptcy Asked and Answered" (available on Amazon). His second book, this one on law office management, should be out by this spring. When not solving financial problems, you will find David on dinner dates with his wife, Mary, and enjoying time with his children and grandchildren. Sunday night dinners are a ritual. You can connect with David on LinkedIn at [linkedin.com/in/david-krekeler](https://www.linkedin.com/in/david-krekeler) or follow him on Twitter (X) [twitter@jdavidkrekeler.com](https://twitter.com/jdavidkrekeler). Subscribe to his free newsletter by sending him an email. He also has a standing offer to meet with you to discuss bankruptcy and related topics. He buys the coffee and bagel.

Thomas R. Schumacher is a graduate of the University of Wisconsin-Madison where he received his undergraduate degree in Economics and the University of Wisconsin Law School. He is one of the three original shareholders of Bakke Norman, S.C. Tom is a proven community leader in Western Wisconsin. He is respected as a practical solution-based attorney, representing Closely Held Businesses, and structuring Commercial Real Estate and Commercial Finance matters. Currently Tom is utilizing his Certified Exit Planning and Certified Merger & Acquisition Advisor knowledge to assist business owners in positioning themselves and their business to maximize value enabling a transition at any time the owner, the market or potential buyers are ready. Tom is married with four adult children. He is a competitor who loves running and playing golf, but takes special pride in coaching youth basketball.

The Exit Strategy: Succession Planning for Small Firm Lawyers

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I have attended many seminars on retirement for lawyers. They all touch on the ethical aspects of protecting clients. They all say we need to make sure we have thought this through, and we have a plan.

Those things are true, but I have not found seminars that give me concrete examples of how to go about winding down my practice.

Retirement is not always easy. Retirement anxiety is common among professionals. It is a stressful experience for most people. Grief is part of ending a long career.¹ For many, retirement means giving up an identity which we have worked on and promoted for decades. For others, it can mean a substantial drop in income. For all of us, it means a considerable amount of work and requires a considerable amount of planning.

METHODS OF RETIREMENT

There are several ways to retire:

- A. Close the doors and walk away
- B. Sell the practice
- C. Merge the practice with another
- D. Wind down as you wish

A. CLOSE THE DOORS AND WALK AWAY

Although this may sound easy, it is not. Client needs must be met. For most lawyers, closing the doors will require slowing down, finishing up cases, and collecting receivables. Expenses continue throughout this process. Some people have problems with identity. Being a lawyer is more than a job. It is who and what you are.

A lawyer closing their practice has both fiduciary and ethical duties. SCR 20: 1.16(d) requires that a lawyer, “shall take steps to the extent reasonably practicable to protect a client's interest....” These include at a minimum:

- Providing the client with reasonable notice.
- That notice must be given sufficiently in advance to allow the client time to employ other counsel.
- Papers and property to which the client is entitled must be surrendered.

¹ Encore A High Achiever's Guide to Thriving in Retirement, Elizabeth Zelinka Parsons, Zelinka Parsons Publications,

- Any advance fees or expenses that have not been earned or incurred must be refunded.

Unfortunately, for some lawyers retirement is involuntary, due to death or disability. For information on these circumstances, see the Solo Practitioners Handbook for Death and Disability, published by the Solo and Small Firm General Practice Section of the State Bar.

This presentation is not for lawyers who truly want to close their doors and walk away.

B. SELL THE PRACTICE

This sounds good but is often easier said than done. Selling a practice requires locating a buyer, valuing and negotiating a price and terms, and getting paid.

Locating a buyer can be very difficult. Many lawyers and small firms, especially in rural Wisconsin, have a hard time even attracting associates or partners. Finding those lawyers who also want to run a business further narrows the universe of possible candidates.

Valuing the practice also poses significant problems. The value of any asset is subject to the economic laws of supply and demand. Right now, baby boomers, of which there are many, are at retirement age, and the number of sellers is growing. It is a buyer's market.

The actual numerical valuation of a practice is also difficult. Law firms are not a capital-intensive business. A firm can be started with very little cash outlay. So what assets are available for sale?

➤ **Furniture Fixtures and Equipment**

These are usually of minimal value. Desks, chairs, and old computer monitors are not worth much. Neither are office supplies. The technology hardware and software costs a lot to obtain but brings little on resale. The technology itself is quickly outdated.

➤ **Accounts Receivable**

Hopefully, these are minimal, but for many of us they are far more, at least in face amount, than we like. Valuing receivables for any business is always difficult. The seller is the one with a relationship with the client and is far more likely to be able to collect than would an unknown buyer of the account. The seller is usually in the best position to collect the receivables, since the seller has a direct relationship and understanding with the client. A

buyer might not want the burden of collecting old bills, especially if they are aged, disputed, or unlikely to be paid.

A buyer of receivables in any business takes a big risk that the client will raise various payment disputes. It is easy for a client to claim to a third party, who is not familiar with the matter, that the work was not done properly or timely. And it is difficult for the buyer of receivables to counter such disputes. Trying to collect in the face of such disputes can create tension or even ethical issues for the buyer if the client is continuing an attorney-client relationship with the buyer. The buyer will not want to sour the goodwill that he or she just bought.

In practice, many law firm sale agreements either let the seller keep and collect the receivables directly or let the buyer collect them on behalf of the seller (usually for a fee), but still ensure the receivables belong to the seller. A prudent buyer will want a substantial discount if buying the receivables. The buyer should want to require the cooperation of the seller, which could mean substantial time commitments. The buyer should also want indemnities, such that the buyer gets compensated if a client raises a malpractice or dispute.

All in all, it is probably better for the seller to retain the receivables and not include them in the valuation for sale.

➤ **Work in Process**

In some practices, there could be substantial work in process at the time of sale. In hourly cases, this is handled fairly easily by simply recording the time not yet billed. It becomes far more difficult for contingency and flat fee cases.

In almost every instance, work in process must be discounted substantially. WIP is not cash, and its value depends upon whether the client remains with the buyer. Even if the buyer remains, the value may depend upon whether the matter is successfully completed, and the settlement or award collected. Even on matters which are not contingent upon success, the value depends upon whether the fee is collected.

Do not, in most cases, expect to get much from a buyer for work in process.

➤ **Intellectual Property**

In many firms, this will have little or no value. In others it may. This could include the telephone number and website, which may yield client inquiries for years into the future, especially if they are maintained.

Few lawyers have copyrighted works of any value, and it is unlikely that trademark rights for a solo or small firm will be worth much. Domain names can sometimes be valuable, if simple and SEO friendly such that there would be demand for that name if surrendered.

Intellectual property might also include the systems and processes which the seller has in place. These might include practice manuals, training materials, pricing models and workflows, and client intake procedures. The larger the practice the more likely it is that these exist and may have some value.

For most solo and small firms, intellectual property is not sold separately. It is wrapped into the general goodwill and overall purchase price of the practice.

➤ **Goodwill**

This is the expectation that clients and referral sources, and future revenue, will continue with the practice after the sale.

Client relationships can be valuable, but clients cannot be sold. Clients can change lawyers whenever they want... for any reason or for no reason. Still, if a firm has long standing loyal clients who are likely to remain or return, the buyer should be willing to pay for that prospect. Clients that generate repeat work are far more valuable than those of a one and done practice, like bankruptcy.

Referral sources can be valuable as well but can also be difficult to transfer. Other attorneys, accountants, financial advisors, etc., usually make referrals to a specific lawyer, rather than to a law firm. Unless the sale of the law firm is to be conducted over several years, it will be difficult for the buyer to develop the necessary relationships with the referral sources. To get referrals, the referral source must know the lawyer, like or at least not dislike the lawyer, and trust the lawyer. This all usually takes time.

➤ **Reputation and Brand**

These can be of some value but, again, are usually tied to the lawyer who is selling. Transfer is difficult. It is generally easier to transfer specialized expertise or niche, such as having a reputation as “the bankruptcy lawyer” or “the DUI defense lawyer” in the area.

Goodwill is probably not susceptible to a formula valuation. It's all about the likelihood that the clients and referrals will continue. Sometimes, this is valued as a declining percentage of annual revenues.

➤ **Ethical Issues with Sales**

SCR 20: 1.17 requires the selling lawyer to withdraw from the practice and stop accepting clients or matters within the scope of the practice that is being sold. The seller must either stop practicing law or at least stop practicing in the areas of practice being sold.

This prohibition applies to the geographic area or jurisdiction in which the practice has been conducted. Before remote work was widespread, we had a better idea of what this means.

➤ **So, What is the Value?**

In most industries, the sale price ultimately becomes a multiplier of revenue or profits. Law firms rarely accumulate profits. Instead, revenues are distributed annually, or even more often.

Dentists pay a lot for a practice. Most of that price is for access to, and transfer of, patients and records. Lawyers cannot sell clients, nor can they transfer them.

The multiplier for a law practice is lower than in other industries. A business buyer needs to have the business run without the former owner. The attorney-client relationship is often a very personal one, and the buyer needs to retain the clients to get value from the goodwill.

➤ **Getting Paid**

Actually getting paid for the sale of any business can be difficult, unless the cash is paid at closing. Businesses often fail and the new buyer may well not be successful.

- Real life example: Solo lawyer with two associates sells the practice to the associates for \$150,000 each. During the first year of operation as owners, the two

buyers have no profit with which to pay the seller. The seller then remains with the firm and ends up giving raises to the associates so that they have funds to pay him.

- Real life example: Solo lawyer sells the practice to two associates for a little more than the hard value of the assets. 18 months later, one of the associates leaves, claiming that running a law firm is just too hard. Seller returns to run the law firm again.

Running a law firm is hard work, narrowing the field of good candidates.

Then, the buyers must make enough money to pay the seller.

C. MERGE THE PRACTICE WITH ANOTHER

Many of the issues mentioned above may be able to be addressed more favorably in a merger rather than a sale. The decision to retire is not easy. The most valuable asset of a law firm is its goodwill consisting of its relationship with clients, referral sources, and other related advisors to clients. Following close behind is the staff, practice management systems, and practice area systems. In a merger, all these assets may be assimilated.

The practice of law is based on the personal relationships between the lawyer and client. This is particularly true with small firms practicing in smaller communities and in the rural areas of Wisconsin.

Accounts receivable and work in process may be retained by the solo. The actual terms are subject to negotiation. However, it does not need to be complicated. The solo can simply proceed to collect the accounts receivable as they always have, or the merged firm can assist in the collection process by integrating the accounts into its existing billing and collection systems. Since the solo will continue practicing for a period of time in the merged firm, the work in process can be entered into the firm's billing system, credit for the collections for work prior to the merger can go to the solo, and work following the merger will become part of the fee allocation and salary arrangements of the merged firm.

➤ Establishing a Brand: The Bakke Norman Story

Bakke Norman and Schumacher; Bakke Norman Schumacher and Skinner; Bakke, Norman, Schumacher, Skinner and Walter; Bakke Norman, Schumacher, Skinner, Walter and Steans; and finally, Bakke Norman (1985 to 2025). The Bob Walter and Bob Richardson

mantras; establish a brand, and a successful partnership requires that you be willing to give more than you take. Each of the firm transitions was unique.

The potential buyers in the sale of a practice and potential merger candidates in a merger are people and firms the solo or small firm already knows. Particularly in the more rural areas of Wisconsin.

D. WIND DOWN AS YOU WISH

➤ What is Retirement?

I had always thought that, in retirement, we were supposed to do the things we truly enjoy. So, if you enjoy what you are doing now, in your professional life, why would you want to stop?

But, of course, for most of us, there are aspects of our profession that we do not truly enjoy. For me, it is having to manage people. I do not like having to make sure people enter their time for billing purposes, nor do I like having to deal with any sort of personal disputes between employees. I also do not enjoy having to negotiate pay changes or enforce any of our proven standard policies.

However, I do enjoy meeting new clients, learning about them, and solving problems with and for them. I enjoy the business aspects of running a law firm, in the sense of constant improvement and adaptation to changes, as well as writing and teaching.

I have found that many other lawyers share these feelings or overall approach about our practices. Parts of practices we truly enjoy, while other parts we would be glad to be rid of. Most commonly, it is the administrative aspects of running a law firm that are grinding and boring.

So, for me, retirement was going to be staying in the law firm but only doing those tasks and engaging in those activities that I truly enjoyed. In a nutshell, I wanted to continue doing work on my terms, and with no responsibility.

➤ For The Success of The Firm

I have seen this work in person. My long-time partner, Gard Strother, wanted to cut back on his workload and have more time for the many activities he enjoys. Gard is an excellent golfer, an avid fisherman, a woodworker, and much more. However, these are hobbies that take a lot of time and are not particularly conducive to a lot of production in a law firm. We

wanted to find a way for Gard to continue to contribute to our firm, while simultaneously being able to devote considerably more time to his retirement activities.

We did that quite successfully. Gard switched from a salary and a fixed share profit, to being paid only for what he produces, and still having an opportunity to share in profits.

Here is how it worked:

The agreement must provide for variable compensation. Salaries do not work very well when neither party knows how much time will be devoted to the attorney's effort. In our case, Gard turned 64 and we revised our firm operating agreement. Instead of a salary and a share in profits, he would receive \$100 for every hour of work billed and collected. At the time, this worked out to about 40%.

Recognizing that lawyers sometimes grant discounts to clients, and Gard often did, you could discount fees by up to 10% without any penalty. The members of the firm wanted this provision, for even though he was being paid only on what he collected, there is an administrative cost in keeping an attorney.

Gard often assisted the firm administratively, and we expected that he would continue to do so. Personnel issues, malpractice insurance applications, and other matters all take time, and we felt he should be compensated for that time. Because that time has no accountability, in the sense that a client is looking at the charges, we agreed that \$50 per hour would be appropriate. Being compensated, the administrative work had to be agreed upon in advance.

Gard continued to have full use of his office, our staff, and all the back office support the firm provides to all lawyers. He could even still share in the year-end profit bonus, if his billed and collected hours reached certain thresholds. His share of the bonus pool would increase as his billing collected hours increased.

This arrangement worked very well all the way up to Gard's full retirement, and toward the end of last year. By making the compensation variable, we avoided the stress and tension that comes from an employer's need for billable hours, prompt time entry, and effective collection efforts.

He was able to work as much or as little as he wanted to, and he took full advantage of that overtime. Each year, his hours worked went down a bit, as he found he enjoyed more time for other activities.

➤ **How To Set Up a Wind Down Retirement**

The most important factor is probably to find a firm for which you will be a good fit. Our practice is highly specialized, solving financial problems for Wisconsin businesses and families. We have had great success bringing in an otherwise retiring bankruptcy lawyer and a tax lawyer who had sold her practice.

Both were able to give up the time-consuming and frankly unenjoyable aspects of their practices. We handle all the administrative and back-office functions, including invoicing, collections, and malpractice insurance applications. They can focus on their clients, or if they wish, marketing.

Both complemented our practice very well. The bankruptcy lawyer wanted more time off for extensive travel with her mother and sister. Knowing that experienced bankruptcy lawyers in our firm could cover her meetings and hearings while she was gone was a vast improvement for this former solo lawyer.

As an otherwise retiring lawyer, she had established many client and referral contacts over the decades. Those people still contact her for representation, but she need not turn them away. Instead, she can choose to do the work herself or can simply have other lawyers in the firm handle the matters. She also appreciates the fact that she can do some of the work and take advantage of our other attorneys, paralegals, and support staff to handle as much or as little of the matter as she wishes.

The key was her fit with us. We needed a lawyer with bankruptcy experience, and she had that. The fact that she could refer her excess work was a bonus.

Solo lawyers looking to wind down need to consider what firms or other lawyers they might affiliate with, in effect, on a part-time basis. A family lawyer discussed this option with me, and I provided him with a list of about 20 firms that I thought could benefit from his expertise. Not all were in his town or even his county. That is no longer necessary for an effective employment relationship.

We have extensively studied the billed hours of our lawyers who work remotely and consistently find that production is higher on days they are in our physical office. But, with the lawyer who is winding down, and on variable compensation terms, the employers' concern about production becomes minor. The law firm is paying only for the production.

Therefore, a retiring lawyer who is winding down has far more options than in the past. The fit is defined primarily by the type of work the lawyer wishes to continue doing, and, of course, the culture of the employing law firm.

The Numbers

➤ Hourly Matters

The firm should pay the lawyer 40% of the fees billed and collected by the lawyer.

If the lawyer uses other lawyers or paralegals (other timekeepers) on the matter, the fees need to be split. If not everything is collected, it can become a problem determining whose fees the client did not pay.

Therefore, we now compensate at the rate of 30% of hours billed.

The contract should provide for deductions for billed amounts which are written off or otherwise not collected. We have not had to use or enforce this provision very often, but it does serve as a shield for the firm. Depending upon your practice type, it may be possible to have very large receivables, and the firm would not want to pay 30% of those amounts if they are not collected. It is just good practice to have everyone in the firm always focused on making sure the firm gets paid for its work.

➤ Flat Fee Matters

We pay 30% of net fees collected.

For these purposes, net fees are defined as gross fees, less unreimbursed costs and disbursements.

If the attorney delegates work to other firm employees on a flat fee matter, the net fees collected are prorated. The attorney's proportional share is determined by dividing the attorney's billed fees on the matter by the total fees billed on the matter. To do this, you must keep track of your time on all flat fee matters, which you should be doing anyway.

➤ Contingent Fee Matters

Attorneys are compensated on contingent fee matters at the rate of \$50 per hour billed.

Said amounts are paid only from net fees.

Net fees are defined for these purposes as gross fees, less unreimbursed costs and disbursements.

The attorney is paid before any other deductions and before the firm receives its share of the gross fees.

If work on a contingent fee matter is delegated to other firm employees, the net fees collected are prorated. The attorney's proportional share is determined by dividing the attorney's billed fees on the matter by the total fees billed on the matter. Again, this means you must keep track of your time on all contingent fee matters, which you should be doing anyway.

➤ **Adjustments**

Our contracts contain an acknowledgement that a substantial failure of the attorney to collect fees billed could justify an adjustment. We specifically do not set any absolute standards or requirements regarding any such adjustment for failures to collect fees billed.

No deductions will be made without the attorney's consent.

We include this provision in the contract, but we have never used it.

Experienced lawyers know what they are doing and whether they have failed to protect the firm.

➤ **Origination Compensation**

This can be a substantial benefit to the winding down lawyer. Clients and referral sources will be contacting well into the future and being able to refer work and be compensated for the referral can be very lucrative. Simply referring the matter to your new firm allows a winding down retiring lawyer to be compensated for the goodwill value of his or her practice.

The attorney is paid 10% of net fees collected.

Net fees are defined for these purposes as gross fees, less costs and disbursements.

The right to origination payments terminates upon termination of the employment contract.

We do not want to have problems with SCR 20: 1.5(e).

Origination crediting compensation is often a problem among members of law firms. Be sure you specifically define the requirements for eligibility for origination compensation on any matter.

➤ **Benefits**

The retiring lawyer is probably a part-time employee. Ours have been, and therefore the typical employee benefits are minimal.

- **Office:** We furnish the attorney with office space, staff assistance, and all back office and other support reasonably necessary to perform the attorney's duties.
- **Liability Insurance:** We maintain professional liability insurance covering the acts and omissions of the attorney and the performance of the attorney's professional duties. If and when the attorney fully retires, the attorney is responsible for obtaining his or her own tail endorsement.
- **Other Insurance:** The firm does not provide health, disability, medical, or life insurance for the attorney.
- **Professional Associations and Societies:** The attorney pays his or her own dues for membership in the Wisconsin Bar and other professional organizations.
- **Retirement Plan:** The attorney is eligible to participate in our retirement plan, after the vesting period.
- **Continuing Legal Education:** The attorney must pay his or her own CLE costs.

➤ **The Advantages and Disadvantages**

Advantages

Benefits to the retiring lawyer:

- Knowing your clients are well cared for.
- Being able to control your future, working as much or as little as you wish.
- Being well compensated for the work you want to do.
- Getting a return on the goodwill you have worked so hard to create.
- No longer having the administrative burdens of running a law office.
- Now having support, in the form of other attorneys, paralegals, and staff.
- More ability to collaborate and mentor.

Benefits to the law firm:

- Gaining an experienced lawyer.

- Having an established referral source in your area of practice.
- Low overhead associated with the retiring lawyer.
- Increased profits.
- More ability to collaborate.

Disadvantages

None that we have found yet.

SCR 20:1.5 Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b)(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par. (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its

determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:

(1) in any action affecting the family, including but not limited to divorce, legal separation, annulment, determination of paternity, setting of support and maintenance, setting of custody and physical placement, property division, partition of marital property, termination of parental rights and adoption, provided that nothing herein shall prohibit a contingent fee for the collection of past due amounts of support or maintenance or property division.

(2) for representing a defendant in a criminal case or any proceeding that could result in deprivation of liberty.

(e) A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or

(2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or

(3) pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client.

(f) Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

WISCONSIN COMMENT

SCR 20:1.5(f) Advances for fees and costs.

Lawyers are obligated to hold advanced fee payments in trust until earned, or use the alternative protection for advanced fees as set forth in SCR 20:1.5(g). Additional requirements for advanced fees are identified in SCR 20:1.0(ag). Sometimes the lawyer may receive advanced fee payments from 3rd parties. In such cases, the lawyer must follow the requirements of SCR 20:1.8(f). In addition, the lawyer should establish, upon receipt or prior to receipt of the advanced fee payment from a 3rd party, whether any potential refund of unearned fees will be paid to the client or 3rd-party payor. This may be done through agreement of the parties or by the lawyer informing the client and 3rd-party payor

SCR 20:1.17 Sale of law practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or in the jurisdiction in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's affected clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the

sale.

WISCONSIN COMMITTEE COMMENT

Paragraph (c) requires notice only to "affected" clients, which is a limitation not contained in the Model Rule.

ABA COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller