

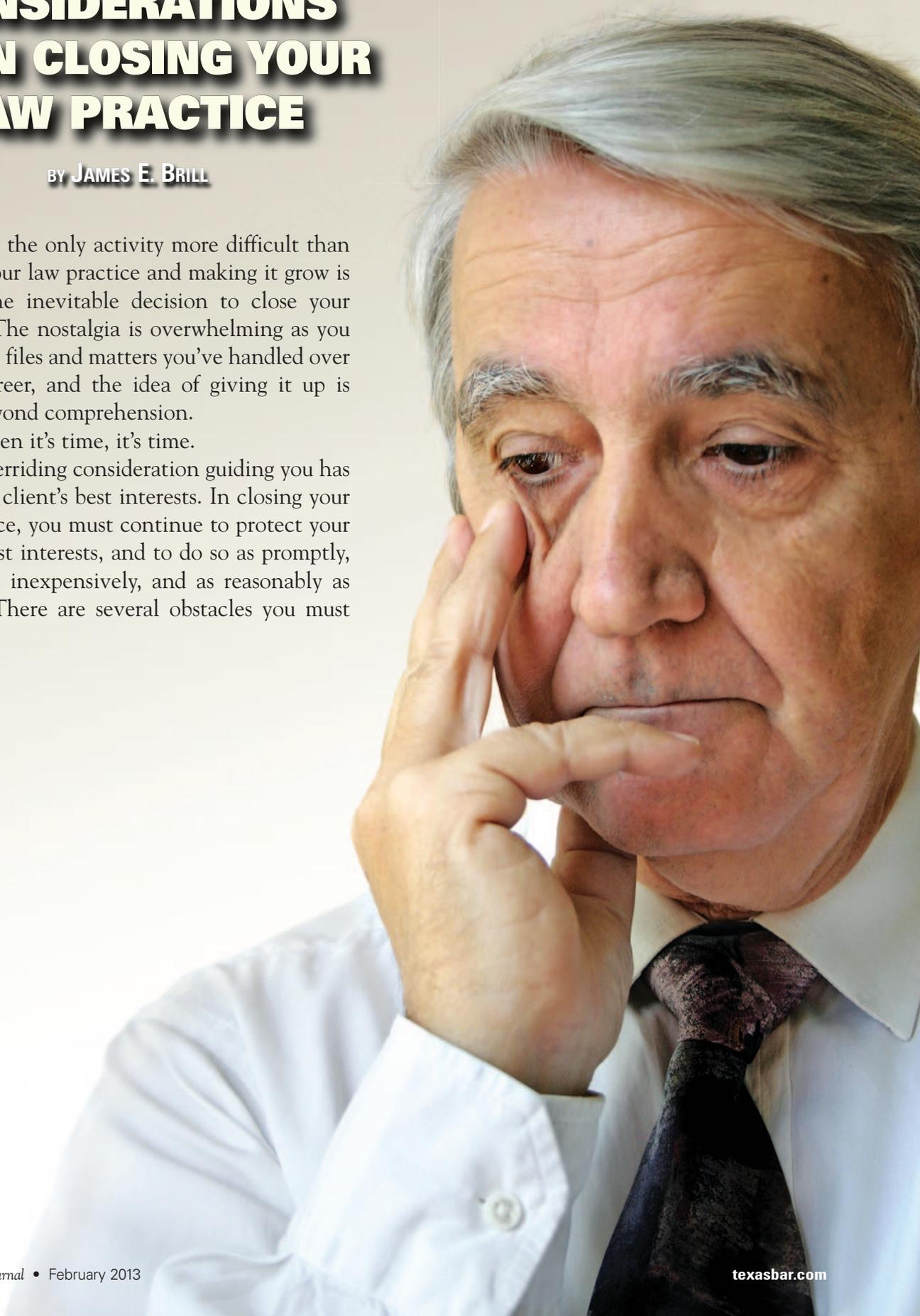
CONSIDERATIONS WHEN CLOSING YOUR LAW PRACTICE

BY JAMES E. BRILL

Perhaps the only activity more difficult than starting your law practice and making it grow is to face the inevitable decision to close your practice. The nostalgia is overwhelming as you review the files and matters you've handled over a long career, and the idea of giving it up is almost beyond comprehension.

But, when it's time, it's time.

The overriding consideration guiding you has been your client's best interests. In closing your law practice, you must continue to protect your client's best interests, and to do so as promptly, efficiently, inexpensively, and as reasonably as possible. There are several obstacles you must confront.



Disciplinary Rule 8.04(a)(10) states that it is misconduct when a lawyer fails to comply with Rule 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorney's cessation of practice.

The Texas Rules of Disciplinary Procedure are not generally known by the members of the Bar who are not subject to disciplinary proceedings. However, Rule (aka Section) 13.01 of those rules sets forth the requirements relating to notifications that must be given when an attorney ceases to practice.

This rule requires a lawyer who chooses to retire and become inactive to provide written notice to all clients who have not selected another attorney to handle their current matters, and also to courts and those others who have reason to be informed of the cessation of practice.

The most vexing problem for so many lawyers relates to the seemingly endless number of files that have accumulated over a lifetime of law practice. In most instances, longtime practitioners did not require or receive written authorization from their clients to the effect that they could dispose of the client's files upon completion of the work or a reasonable time thereafter.

To the astonishment of many, it appears that the law in Texas is that the client owns the entire file. How can a lawyer ever destroy old files owned by clients without such consent? It is an unreasonable and unnecessary burden to require lawyers to provide storage indefinitely for files relating to matters long forgotten by lawyers as well as by their clients. The overcrowding of the garage would push the spouse's automobile into the driveway with all the family issues that would bring.

Another difficulty relates to an earlier decision to retain wills and other original documents for the benefit for our clients. This results in an extremely onerous burden on the lawyer and causes considerable frustration in attempting to locate the clients to give them notice and to obtain instructions regarding those wills, other original documents, and the related files.

As for internal records, it is mandatory for a lawyer to preserve, for a period of five years after final disposition of the matter, the lawyer's trust account records. This is required by both the Disciplinary Rules and by the Rules of Disciplinary Procedure. Furthermore, recent reports indicate that many banks, particularly the national banks, are refusing to deliver funds held in the IOLTA account of a deceased lawyer, even to the independent executor of the estate of that deceased lawyer. If all funds belonging to clients cannot be distributed before closing the practice, adding another signatory to the account would be a good idea.

In closing a practice, there are some simple guidelines:

1. Do not accept new work no matter how interesting or lucrative.
2. Review all pending files and do the work necessary to conclude the representation, and ensure you have provided all agreed services.
3. Pay yourself currently earned fees and accrued expenses from clients' deposits as you are authorized. Return unearned and unused deposits to clients.
4. Send final bills because the value of unbilled time and expenses will deteriorate more rapidly if you wait to bill until you no longer maintain an office. The value practically disappears at your death.
5. Provide clients with all the original documents as well as the opportunity to receive the entirety of their files. Please note that you are entitled to make copies of any of those documents, but not at the expense of the clients. Be sure to obtain receipts or other written instructions from clients.
6. If active matters are to be taken over by the lawyers, be sure that the client arranges for substitution of counsel and that you obtain court approval. It is a good idea to have the client agree that you will have no responsibility for events that may occur in the future.

But what about a sale of your practice? The American Bar Association has Rule 1.17, which permits the sale of a law practice. All but four states (Texas, Alabama, Louisiana, and Kansas) have adopted the rule in some form. Without such a rule, a sole practitioner must deal with issues relating to breach of confidentiality, solicitation, barratry, and advertising. And, if you die in the process, payment of fees to non-lawyers (your family members) will be an issue.

This article has only dealt with significant substantive issues. Depending on the situation, there are dozens of ministerial steps that also may be required when you close your office. There are checklists and more information at texasbar.com/lpm for those things that must be considered and accomplished.

JAMES E. BRILL

is a sole practitioner from Houston and a graduate of the University of Texas Law School. His practice emphasizes probate, estate planning, and real estate. Brill is the principal author of the State Bar's Texas Probate System, and was a founding member and later chaired the Law Practice Management Section of the ABA. Brill also has received the State Bar of Texas Presidents' Award as the outstanding lawyer in Texas, and awards for professionalism and excellence in continuing legal education.