

**THE SEAMLESS TRANSITION:
Working Successfully with Another Lawyer as
You Wind Down Your Involvement in Cases**

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You have decided to retire. A bit of planning can protect your clients' best interests, provide for your financial future, and comply with the ethical requirements related to winding down a law practice.

What follows is a chronological plan for winding down a law practice.

I. HOW WILL YOU TRANSITION INTO RETIREMENT?

There are four ways for a lawyer to deal with his cases when winding down a law practice. First, the lawyer could withdraw from all cases and advise all clients to seek other counsel. Second, the lawyer could handle all cases to conclusion. Third, the lawyer could sell all or part of his law practice. Fourth, the lawyer could refer cases to another attorney, with or without a fee division.

Few lawyers will choose to withdraw from all cases and advise all clients to seek other counsel. Clients may rightfully feel somewhat abandoned by such an approach. However, if the lawyer gives adequate notice to clients, and ample time to find other counsel, and the client is not prejudiced, then the lawyer has no further obligation to work on the case, and the matter is done. However, the lawyer may have forfeited what may be substantial, appropriate, and ethical fees earned on the cases.

The second way of proceeding is that a lawyer could handle all cases to conclusion. The benefit of this approach is that the lawyer receives the fees agreed upon from the clients that have retained him. The drawback is that the lawyer needs to continue to operate a law practice until all cases are completed. For personal injury cases, this may mean the lawyer is obligated to keep his office open for years.

A third option is for the lawyer to sell his law practice. The sale of a law practice is permitted under the rules of professional conduct, and it can be appropriate under some circumstances. If a lawyer is considering the sale of a law practice, the lawyer should consult RPC 1.17. Under RPC 1.17 the lawyer must give written notice to each of his clients regarding the proposed sale and the client's right to retain other counsel or take possession of the file. The rule also describes what happens if the clients do not respond to the notice of proposed sale, and what the lawyer must do if a client cannot be given notice of the sale. If you intend to sell your law practice, I strongly advise that you retain both business and ethics counsel to advise you.

Another way to wind down your practice is to refer your cases to another lawyer or to associate another lawyer on the case. For a primarily personal injury practice, this way of dealing with cases may make sense. The balance of this paper discusses how to make a seamless transition, namely how to work with other lawyers as your law practice winds down.

II. WHO TO REFER TO.

If you intend to retire and refer or associate other lawyers on your cases, then there are a number of considerations. The first is probably diligence. Under RPC 1.3 a lawyer shall act with reasonable diligence and promptness in representing a client. With all the matters that must be addressed in winding down a law practice, it would be easy to fall behind on cases. Once the

decision to retire has been made, it makes sense to act promptly in referring or associating other counsel.

Perhaps the next issue is competence. Does the lawyer you intend to refer your clients to have the competence to handle the type of cases that are involved? The best interests of your clients demands competence, and you as the referring or associating attorney want the same thing.

You also want to work with an attorney who understands how you want the cases handled. You may want to do a total “handoff,” meaning that the new attorney just takes over the case. You want the clients’ cases to be handled well, but you do not need to be advised as the case proceeds. Or, on the other hand, you may want to be kept advised of the major milestones in the case. Either way, your wishes should be made clear, and the new attorney should be capable of handling them.

Lastly, you want to be sure that any attorney you refer cases to is well insured. This is in the best interests of your client, and, as will be set forth below, may be in your interest also.

III. HOW IS THE ATTORNEY’S FEE TO BE COMPUTED?

Presumably you have a written fee agreement with all of your personal injury clients. When you refer a case to a new attorney, the fee can be computed under your fee agreement, or under a new fee agreement with the new attorney. If the attorney’s fee is to be computed under your fee agreement, then an addendum should be prepared advising the client that the new attorneys agree to represent the client under the terms and conditions of your fee agreement. Attached as Exhibit 1 is an Addendum to Fee Agreement accomplishing that purpose.

The attorney fee can be computed under a new fee agreement with the new attorney. Almost invariably there will be differences between the original fee agreement and the new fee agreement with the client. The client should be fully advised of these differences and make a fully informed decision to enter into the new agreement. Attached as Exhibit 2 is a copy of our Firm's standard one-third fee agreement. Obviously, fee agreements are modified when the facts of the case require it.

IV. HOW IS THE ATTORNEY'S FEE TO BE DIVIDED?

The Rules of Professional Conduct contemplate several ways for attorney's fees to be divided. It is perfectly appropriate for an attorney who has worked with a client to have a fee division with another attorney outside of the first lawyer's law firm.

RPC 1.5(e) discusses the division of a fee between lawyers who are not in the same firm. The rule provides that the division may be in proportion to the services provided by each lawyer, or each lawyer assumes joint responsibility for the representation. If the fee division is in proportion to the services provided by each lawyer, it appears that the retiring lawyer has little or no responsibility to the client after the new lawyer assumes representation of the client, and there is less exposure to the retiring lawyer.

However, fees can be divided not in proportion to the services provided by each lawyer. In a personal injury matter this typically occurs when a lawyer takes a case into his office, and then refers the case to an attorney who handles only personal injury cases. The referring lawyer may be paid a "referral fee" that is out of proportion to the actual services rendered. For many years this arrangement was at least potentially unethical under the Rules of Professional Conduct. However, under the current rules, the fee division can be out of proportion to the

services rendered by each lawyer, if each lawyer “assumes joint responsibility for the representation.” The note to RPC 1.5 describes what this “joint responsibility” means. The note states, “joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.” The note also emphasizes the suggestions made earlier in this paper that the referral be to a lawyer who is competent, well insured, and one that the referring attorney can work with.

V. DOCUMENTING THE FEE DIVISION.

When an attorney refers the case to another attorney, and there is a fee division, the fee division must be documented in writing. Attached as Exhibit 3 is a copy of the DawsonBrown, P.S. Attorney Referral Agreement.

Sometimes, an attorney may decide to “associate” with another attorney. By “association,” I mean that the two attorneys, from different firms, will work on the client’s case jointly, and will divide the fee. Attached as Exhibit 4 is a copy of the DawsonBrown, P.S. Attorney Association Agreement.

VI. CLIENT CONSENT TO CASE REFERRAL AND FEE DIVISION.

Clients must be fully advised of the retiring attorney’s plans, at least as relates to their case. For any case where there is a fee division, there should probably be a face-to-face meeting with the client to discuss, at a minimum: (1) the status of the case; (2) the proposed referral details, including the fee division; (3) the plan for the future handling of the case; and (4) to answer any of the client’s questions. Obviously, it is at the discretion of the referring attorney how to conduct this meeting, and how much detail to discuss.

The fairly recent changes in the Rules of Professional Conduct requires the client to agree, in writing, to a fee division between lawyers.

RPC 1.5(e) provides:

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

(1)(i) the division is in proportion to the services provided by each lawyer or each lawyer assumes joint responsibility for the representation;

(ii) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(iii) the total fee is reasonable;

(emphasis supplied).

In the past, the RPCs required only that a client be notified that there was a fee division between lawyers, not the actual terms of the fee division, and the share each lawyer will receive. To comply with the current rules, we have prepared the Attorney Referral Agreement in Exhibit 3, and the Attorney Association Agreement in Exhibit 4. Both of those agreements provide for the client to consent in writing to the fee division arrangement, including the share each lawyer shall receive. These forms should comply with the RPCs relating to fee divisions.

VII. MISCELLANEOUS.

Many lawyers who retire will stay admitted to the Washington State Bar Association, although perhaps on an inactive status. If you have ongoing fee divisions on personal injury cases, which might be paid over a several year period, it will be important for the retiring lawyer to remain admitted as a lawyer. RPC 5.4 appears to prohibit the sharing of legal fees with a non-lawyer.

The windup of a law firm is a significant stage in a lawyer's career. As with any significant step, it may make sense to consult with ethics counsel. I have found over the years that consulting with ethics counsel can often refine your strategy for dealing with a difficult matter, provide for your clients' best interests, and help you sleep better at night.

VIII. CONCLUSION.

Retirement should be the time to pursue new interests and to enjoy the fruits of a career of hard work. A little planning for the transition from law practice to retirement can protect your clients' best interests and help provide for your own future.

Bob Dawson
May, 2007

**ADDENDUM TO FEE AGREEMENT
ADVISING CLIENTS OF
FEE DIVISION BETWEEN ATTORNEYS**

The undersigned, hereafter “clients,” have a fee agreement with _____ dated _____, a copy of which is attached.

Clients acknowledge that the lawyers of DAWSONBROWN^{PS} and _____ shall be jointly responsible for clients’ representation. Clients consent to the joint representation, to the participation of all lawyers in clients’ case, and to a division of attorney fees as may be agreed upon between the lawyers. Clients wish to employ DAWSONBROWN^{PS} under the same terms and conditions as the attached fee agreement.

Attorneys agree to represent clients under the same terms and conditions as the attached fee agreement.

ATTORNEYS:

CLIENTS:

DAWSONBROWN^{PS}

By: _____

Date: _____

Date: _____

AGREEMENT FOR LEGAL SERVICES

The undersigned, hereinafter “clients”, employ the law firm of DAWSONBROWN^{PS}, hereinafter “attorneys”, to handle all claims of the clients or the clients’ minor children or wards against any and all persons or entities arising out of _____.

Clients and attorneys agree as follows:

1. **ATTORNEY FEE:** Attorneys will receive an attorney fee of one-third (1/3) of all sums recovered by settlement or trial. In the event an appeal is filed by any party, attorneys will receive forty percent (40%) of all sums recovered after the date a notice of appeal is filed. “All sums recovered” includes all monies paid in settlement or award of damages, attorney fees, costs, penalties or interest. The attorney fee will be calculated before deduction of costs. If there is no recovery, no attorney fee will be paid.
2. **COSTS:** Clients are responsible for payment of costs. Costs may include, but are not limited to, filing fees, service fees, witness fees, research fees, and charges for investigation, records, medical reports, photographs, exhibits, photocopies, telecopies, telephone long distance, postage, travel and accommodations, videotaping, and depositions. Unreimbursed costs will be deducted from any recovery after calculation of the attorney fee.
3. **ADVICE CONCERNING ATTORNEY FEE:** Clients have been informed of the alternative of employing attorneys on an hourly fee basis. This alternative would require payment of a retainer at commencement of the case, payment of costs as incurred, and payment of fees each month at the rate of \$350 per hour for lawyer services and \$95 per hour for paralegal services. In deciding to employ attorneys on a contingent fee basis, clients have considered the risks involved in this case, the experience and reputation of DAWSONBROWN^{PS}, the uncertainty regarding the number of hours necessary to prosecute the case, and the fact that the clients ultimately will decide whether to accept or reject a particular settlement offer. Clients also are informed that clients have the right to petition the court to determine the reasonableness of attorney fees charged by attorneys not later than 45 days following receipt of a written statement of the clients’ net recovery and the method of its calculation.
4. **STRUCTURED SETTLEMENT:** If any part of a recovery calls for annuity payments in the future, the attorney fee on this portion of the recovery will be computed based on the actual cost of the annuity and shall be paid from the cash portion of the recovery at time of settlement.
5. **AUTHORITY, DUTIES AND REPRESENTATIONS:** Clients authorize attorneys to file a lawsuit if and when attorneys consider it advisable. Clients will cooperate with attorneys and will timely respond to attorneys’ requests. Attorneys will make no settlement of clients’ claims without clients’ consent. Clients acknowledge that attorneys have made no guarantee of a successful result, and that any statements regarding the merit or outcome of the case are professional opinion only.
6. **ASSOCIATE COUNSEL:** Attorneys reserve the right to associate other attorneys in clients’ representation, without additional expense to clients. Clients consent to such association, and to a division of attorney fees as may be agreed upon between associated counsel.

7. **PROBATE**: In the event a death requires commencement of a probate action to prosecute clients' case, clients authorize attorneys to retain probate counsel. Fees and expenses incurred in any probate proceedings will be considered a cost item.

8. **MEDICAL AND SUBROGATION PAYMENTS**: Clients authorize attorneys to pay from clients' share of any recovery any unpaid medical bills or subrogation interests related to clients' claim.

9. **WITHDRAWAL AND DISCHARGE**: If clients discharge attorneys, or if attorneys withdraw for cause, clients agree to pay attorneys a reasonable attorney fee and any unreimbursed costs. The attorney fee shall be, at attorneys' option, either (a) an hourly fee for the attorney and paralegal time expended on the case; (b) the contingency percentage of the last settlement offers; or (c) a prorata portion of the contingent fee ultimately recovered based on the relative contributions to the case by DAWSONBROWN^{PS} and any successor law firms, as determined by the law of quantum meruit and the factors set out in Rule for Professional Conduct 1.5(a).

10. **SPECIAL POWER OF ATTORNEY**: Clients grant to attorneys clients' power of attorney to act as clients' attorneys in fact to do all things necessary and proper in handling clients' case, including the execution of checks, drafts, releases and other agreements pertaining to this case only.

ATTORNEYS:

CLIENTS:

DAWSONBROWN^{PS}

BY: _____

DATE: _____

DATE: _____

DATE: _____

ATTORNEY REFERRAL AGREEMENT

INTRODUCTION: [Referring attorney] currently represents [client]. [Referring attorney] requests that DAWSONBROWN^{PS} represent [client], and DAWSONBROWN^{PS} agrees to represent [client].

MATTER: [Client] was harmed as a result of _____, which occurred on [date].

LEGAL SERVICES: DAWSONBROWN^{PS} agrees to assume full representation of [client] for the above matter. [Referring attorney] shall not be obligated to provide any further legal services on client's case after [date].

ATTORNEYS FEE: The fee charged to client will be as set forth in the [date] fee agreement with client. Of the fee charged to client, ___% will be paid to DAWSONBROWN^{PS}, and ___% will be paid to [referring attorney].

COSTS ADVANCED: [Referring attorney] has advanced costs on client's case in the amount of \$_____. DAWSONBROWN^{PS} shall advance all further costs on client's case and [referring attorney] shall not be obligated to advance any further costs on client's case.

APPLICATION OF CASE PROCEEDS: Case proceeds shall be applied first to the costs advanced by [referring attorney] and DAWSONBROWN^{PS}, and then to the attorneys' fees as set forth above.

DISPUTE RESOLUTION: In the event that a dispute arises between [referring attorney] and DAWSONBROWN^{PS}, the dispute shall be resolved by arbitration.

DAWSONBROWN^{PS}

[Referring Firm]

By: _____

By: _____

Date: _____

Date: _____

CLIENT CONSENT: Client agrees to this Attorney Referral Agreement, including the share of attorneys fees each lawyer will receive.

CLIENT: _____

DATE: _____

ATTORNEY ASSOCIATION AGREEMENT

INTRODUCTION: [Referring attorney] currently represents [client]. [Referring attorney] requests that DAWSONBROWN^{PS} represent [client], and DAWSONBROWN^{PS} agrees to represent [client].

MATTER: [Client] was harmed as a result of _____, which occurred on [date].

LEGAL SERVICES: DAWSONBROWN^{PS} agrees to associate with [referral attorney] in the representation of [client] for the above matter. _____ shall act as lead counsel.

DAWSONBROWN^{PS} shall provide the following legal services to client: [describe].

[Referring attorney] shall provide the following legal services to client: [describe].

ATTORNEYS FEE: The fee charged to client will be as set forth in the [date] fee agreement with client. Of the fee charged to client, _____% will be paid to DAWSONBROWN^{PS}, and _____% will be paid to [referring attorney].

COSTS ADVANCED: [Referring attorney] has advanced costs on client's case in the amount of \$_____. Further costs advanced shall be paid as follows: [describe].

APPLICATION OF CASE PROCEEDS: Case proceeds shall be applied first to the costs advanced by [referring attorney], and DAWSONBROWN^{PS}, and then to the attorneys' fees as set forth above.

DISPUTE RESOLUTION: In the event that a dispute arises between [referring attorney] and DAWSONBROWN^{PS}, the dispute shall be resolved by arbitration.

DAWSONBROWN^{PS}

[Referring Firm]

By: _____

By: _____

Date: _____

Date: _____

CLIENT CONSENT: Client agrees to this Attorney Association Agreement, including the share of attorneys fees each lawyer will receive.

CLIENT: _____

DATE: _____