



Reducing Legal Services or Closing a Non-Profit Legal Program Checklist

This project was supported by Grant No. 15JOVW-24-GK-03024-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

INTRODUCTION

A loss of funding and the subsequent reduction or closure of essential legal services and programming can create a challenging and traumatic situation for employees and survivors of violence who rely on these essential services. This checklist and the trauma-informed considerations included here are designed to support program managers, administrators, and supervisors in the process of service reduction or closure. This product was supported by the Sexual Assault Justice Education Project, a project which funds the provision of technical assistance and support to non-profit lawyers and legal services support professionals who are funded, or eligible for funding, by the Office on Violence Against Women (OVW).

The considerations and checklist here are not exhaustive, and the suggestions should be tailored to the individual needs of each program. Programs are encouraged to develop a written policy outlining the procedural steps they would take in the event of a reduction or loss of grant funding that would substantially impact operations. The policy and accompanying procedures should be in accordance with state and federal law, ethical obligations, and trauma-informed principles, i.e. safety, collaboration, support, empowerment, and transparency.

Clients' informed consent throughout the closing or scaling back of a legal assistance program is essential and must meet the Violence Against Women Act's (VAWA's) nondisclosure and release requirements and an attorney's confidentiality requirements and related ethical duties.¹ A legal assistance program should never share information outside of the program, including with another component of a multi-service organization (including executive leadership), without a client's consent, court order, or other statutory or court mandate, to preserve attorney-client confidentiality and privilege and VAWA confidentiality.²

¹ ABA Model Rule 1.0(e) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

² ABA Model Rule 1.6(b)(7), allows an attorney to reveal information related to representation of a client to the extent the lawyer reasonably believe necessary when changing the composition of a firm, "only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client." VAWA is clear that within a multi-service organization, information may not be disclosed by the victim services component (including legal assistance) with a non-victim services component of the organization without informed client consent, a statutory mandate, or a court mandate. 28 CFR 90.4(b)(2)(iii).

CHECKLIST

1 CONFIRM AND DOCUMENT THE DECISION

- Document when and how the decision was made to reduce legal services or close the program entirely, whether from a loss of funding or an external directive
- Notify organizational leadership and/or the governing board as required
- If the decision is discretionary, obtain formal approval from the organization's governing body or executive leadership in accordance with organizational bylaws or governance procedures
- Consult the State Bar to be aware of ethical obligations

2 ESTABLISH PROGRAM OR CASE/MATTER CLOSURE TIMELINES

- Determine the program's last day of operations and any relevant partial wind-down dates (e.g. last client intake, last payroll cycle, last day in office, etc.)
- Establish deadlines for key program and case/matter closure activities and create a checklist, which could include:
 - Notifying employees
 - Conducting the client inventory
 - Notifying affected clients³
 - Notifying partners and funders
 - Returning files to clients or storing closed client files with an attorney or law office
 - Obtaining VAWA-compliant Releases of Information (ROI) for clients wishing to transfer to outside counsel or another legal program
 - Filing motions to withdraw or substitute counsel with the court
 - Transferring open cases either internally or externally to outside counsel or another legal services program
 - Filing motions for case disposition when clients did not receive actual notice of closure or haven't provided informed consent to the disposition
 - Closing any remaining cases in the event of a full closure
- Prepare employee information on paid time off payout, benefits, unemployment claim support letters, etc.
- Identify attorney or law firm custodian of the records after the program is closed⁴

³ Identify specific notice timeframe requirements in the jurisdiction.

⁴ An attorney or law firm needs to be the custodian of the records to protect attorney-client confidentiality and privilege and avoid waiver. ABA Model Rule 1.19 highlights that the duty of confidentiality continues after a client-lawyer relationship ends. Also, legal assistance programs will need to have already received client consent or a court order to share confidential and personally identifying information with the custodian.

3 NOTIFY THE EMPLOYEES

- Inform employees as early as possible of the decision to reduce services or close program
- Assign responsibilities for the items on the program/matter closure checklist and identify a point person for staff questions
- Schedule regular one-on-one and group meetings to process, plan, and check in on progress and well-being
- Before they leave the program, remind legal assistance program staff of their duties to former clients with respect to representation and confidentiality⁵

Trauma-Informed TIPS:

- ✓ *Communicate clearly and transparently with staff whose jobs will be impacted, including both staff who are laid off and staff who will be taking on an additional workload. Remember they are the experts in their own lives. Consider what information they need to allow them to make decisions that are in their best interests. Giving them additional time will allow them to look for other work and financially prepare for impacts on their income.*
- ✓ *Ask for and take into consideration all staff feedback, suggestions, and ideas for how to approach the closure to mitigate trauma impacts to both staff and clients. Consider offering confidential or anonymous feedback opportunities to encourage honest feedback without fear of retaliation.*
- ✓ *Center empathy, respect, and understanding in all meetings and communications with staff. Intentionally create time to celebrate achievements of staff and the program itself. Be intentional about holding space for staff to grieve and say goodbye to each other.*
- ✓ *Think creatively about the kinds of support that can be provided to staff affected by the closure. Offer creative options to extend positions, such as voluntary salary reductions, or an extended part-time arrangement (rather than full-time) to extend employees' access to healthcare and other benefits. Encourage employee autonomy as funding becomes more unstable, including encouraging employees to seek work elsewhere to meet their needs, offering to provide reference letters, or providing incentives for them to stay longer.*

⁵ ABA Model Rule 1.9(c)(2) states that, "A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation except as these Rules would permit or require with respect to a client."

4 CREATE A CLIENT AND CASE INVENTORY/SPREADSHEET⁶

- For open cases, include:
 - Type(s) of legal matters for each case
 - Attorney(s) assigned
 - Current status
 - Outstanding costs under fee agreements
 - Important court dates, deadlines, or statutes of limitations
 - Motions that need to be filed (e.g. continuances, withdrawal of counsel, etc.)
 - Whether or not the matter can be completed before closure, or will need to be transferred internally to another attorney or externally to another attorney or legal services program
 - Whether the case file will be returned to client
 - Whether the program will need to file a court motion for disposition of cases when clients did not receive actual notice or consent to transfer⁷

Trauma-Informed TIP:

- ✓ *After an initial client inventory, regularly revisit the proposed closing dates and other timelines with all legal services program staff who are responsible for legal representation, administrative operations, and case closing procedures. Ensure that the team has the support they need to meet the agreed-upon internal deadlines and legal obligations.*

- Update the client inventory throughout the process to ensure all client files and cases are managed appropriately and ethically
 - Additional possible inventory categories could track:
 - Date client was notified of closure
 - Method of client notification
 - Instructions or other responses received from the client
 - Whether file has been delivered to the client or transferred to another attorney
 - Steps taken to notify non-responsive clients
 - Status of motions to dispose of cases when clients do not receive actual notice or have not given informed consent for disposition
 - Expiration dates for ROIs
 - Date of attorney withdrawal or substitution of counsel filed with court or administrative entity (and any subsequent action)
 - Effective date of attorney withdrawal or substitution of counsel

⁶ Make sure only members of the legal services team have access to clients' confidential and personally identifying information in the inventory unless a client consents to the disclosure or a court orders it.

⁷ ABA Model Rule 1.17, Sale of Law Practice, requires an order from a court having jurisdiction authorizing their transfer or other disposition when a client cannot be given actual notice of the sale of a practice (comparable to ending a practice due to funding cuts). "The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation.

5 CREATE AN OFFICE RECORD OF IMPORTANT INFORMATION⁸

- Information to consider including:
 - Secure location of open and closed client files (physical and electronic)
 - List of financial accounts – names of institutions, locations, account numbers, relevant usernames and passwords, etc.
 - Details of storage facilities such as P.O. boxes, off-site file storage, and safety deposit boxes
 - Location and access information for computers, voicemail, and databases
 - Designated attorney custodian of records after closure

6 ADDRESS OPEN CASES

Trauma-Informed TIP:

- ✓ *Provide as much advance notice as possible to clients to allow them to process, prepare, and make informed decisions about their own case, including whether to find another attorney, proceed pro se (self-represented), or withdraw their legal case.*

- Complete initial notification of all current affected clients
 - Follow the process determined for initial contact with client, including the content and safe mode of communication
 - Draft a client notification letter, including:
 - Reason the legal program is closing or reducing legal services
 - Summary of the client’s current case status
 - How the closure might affect their legal matters
 - How client files will be managed during and after the closure (include the file retention and destruction policy and how their attorney-client privilege and confidentiality will be preserved)
 - How clients need to provide informed consent for the transfer or storage of their file and any other personally identifying information (describing that information, e.g. client lists, trust account information), and the name of the attorney to whom the file will be transferred if known
 - Options for representation moving forward, including their right to choose a new attorney, options for a new attorney or attorney referral resources, potential cost of legal services (some jurisdictions may require that the fee for services not change upon transfer of a case⁹)

Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist).” An attorney might argue that a reasonable effort to contact a client incorporates whether it is safe to do so.

⁸ Any confidential or personally identifying information needs to be protected.

⁹ ABA Model Rule 1.17 states that, “Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.”

- How client may take possession of their file¹⁰
- Specific date by which the client must consent to the proposed disposition or make other arrangements
- What will happen to the client file and any other personally identifying information if the program does not hear back from them by the specified date¹¹, including when the program will file a petition with the court for disposition of their case file
- Contact information for an attorney or law firm custodian available during and after program closure

Trauma-Informed TIPS:

- ✓ *Consider what individualized support and referrals each client will need and be prepared to offer them at the time they are notified of the office closure. To the extent possible, offer warm hand-offs to other lawyers or legal services programs, attorney lists tailored to their legal matters, help connecting with therapy services, referrals to advocacy or campus support, etc.*
- ✓ *Consider the best way to tell each client about the program's closure (e.g. in-person, phone, letter), considering the client's case status, their relationship with the representative, the kind of case they have, and any urgent legal needs of the client. Be sure that any method used to communicate with a client is safe for them.*
- ✓ *If initial client notification is provided orally, make sure to follow up with essential information in writing in their primary language. The shock of the loss of their legal representative may make it difficult for them to process or retain information.*

Follow up with clients:

- Allocate time to answer client questions, emails, and phone calls
- Notify client of the expected delivery date if a copy of the file was requested (confirm best mailing address)
- Document all client communications and retain copies of correspondence for the closure file

¹⁰ ABA Model Rule 1.17 requires that an attorney selling a law practice give written notice, inter alia, of "the client's right to retain other counsel or to take possession of the file."

¹¹ Check local ethical rules as they may have a minimum amount of time. ABA Model Rule 1.17, Comment [7] includes that a client "must be told that the decision to consent or make other arrangements must be made within 90 days."

Trauma-Informed TIPS:

- ✓ *Encourage clients to ask questions. Acknowledge that it is normal to feel anxious. Reiterate the ways in which the program can support the clients' legal and emotional needs through file transfers, referrals, or hand-offs to other service providers.*
- ✓ *Set aside the time necessary for interpretation, translation, and language access accommodations required to clearly communicate with clients.*

- Communicate with pro bono attorneys and/or other legal services providers to determine capacity to accommodate case transfers
- Obtain informed consent, including VAWA-compliant ROI, before sharing any confidential or personally identifying information with anyone outside of the legal services program
- Provide necessary case information to potential pro bono attorney or legal program to run a conflict check and assess case for acceptance
- If necessary, work with clients to secure consent (or waiver) for conflicts that may be agreed to
- Update client/case inventory to indicate which matters will be closed and which will be transferred
- Inform opposing party/counsel
- Notify court, institution, or entity where client has legal matters pending

Trauma-Informed TIP:

- ✓ *Make sure that clients are given autonomy over whether to transfer to another attorney and which attorney. If the agency has contracted with an outside attorney to cover cases or help with the closure of the program, the client should still be informed of their right to any counsel of their choice and must give informed consent to the transfer of their case.*

- File substitution or withdrawal of counsel
- Begin closing or transferring cases in accordance with timeline
- Track progress for each open client matter
 - Confirm in writing with the client the date of case closure or completion of case transfer
- In the event of program closure, set up auto-replies and voicemail messages to continue for 3-6 months after closure

- In the event of service reduction, assign a member of the legal services team to monitor the email and voicemail boxes for laid off staff

7 ADDRESS CLOSED CASES

- In the event of a reduction in legal services, identify member of the legal services team who will serve as point of contact for former clients
- In the event of program closure:
 - Identify and destroy any files that are not required to be retained in accordance with the program's retention policy
 - For files that need to be retained:
 - Send form letter notifying client of office closure, location of their record, file retention policy, and their right to a copy of the file
 - Determine if paper files need to be scanned and stored electronically
 - Provide copies of file information to the client (or the entire file in some jurisdictions) if requested
 - Track all file dispositions, including:
 - Secure location of file in storage (physical and/or electronic)
 - Whether and when a file was destroyed, archived, or transferred to the client
 - Method of transfer or destruction, and the legal services staff member responsible

8 NOTIFY DEPARTMENTS OUTSIDE OF LEGAL PROGRAM

- Inform all departments, especially those that interface with the legal program (e.g. human resources, IT, development, etc.), of key closure details to ensure a coordinated transition
- Inform them of all relevant closure information, including:
 - Program closure date
 - Name and contact information of attorney or law firm serving as file custodian
 - File storage location (both physical and electronic)
 - Responsibilities for maintaining or archiving shared systems, databases, or case management tools after closure
 - Procedures for closing or transferring grant accounts, trust accounts, and program-specific budgets
 - Any continuing obligations for data security, confidentiality, privilege, and record retention
- Confirm role transitions and access controls (e.g. IT, case database systems, office access) with effective dates

9 NOTIFY STAKEHOLDERS (INCLUDING COMMUNITY PARTNERS)

- Coordinate with communications staff and/or leadership on messaging to ensure consistency and accuracy across platforms
- Notify contract consultants (e.g. IT, human resources, etc.)
- Notify other external stakeholders, i.e. partner organizations, referral sources, courts, funders, community coalitions, of the programs closure or reduction of staff/services
 - Provide clear information about timing, case transitions, and client referral options
- Update the website, voicemail, online intake, and other sources of information
- Send a written notice or statement, as appropriate, to partner agencies, funders, and community organizations explaining the timeline and how affected clients can access continued services

10 MANAGE TRUST ACCOUNTS (IF APPLICABLE)

- Contact the state's IOLTA authority for guidance on proper handling and closure of accounts
- Contact the bank where the accounts are held for guidance on next steps
- Notify all clients with existing trust account balances of their account status and provide written instructions for refund or transfer
- Refund or transfer all balances in accordance with client direction, informed consent, attorney ethical rules, bank procedures, or court requirements
- Make necessary arrangements with an attorney or law firm for maintenance of trust account records for the minimum number of years required in that jurisdiction¹²
- Coordinate with the designated person for deposit, receipt, distribution journal ledger records for each client account
- Take necessary steps to provide the designee authorization to access to the accounts in the event of any remaining balances after program closure
- Document all client notifications, disbursements, and account reconciliations for audit and compliance purposes

¹² Many jurisdictions have specific rules for handling client funds. Check the rules of professional conduct, judicial branch resources, and bar associations. If there is no attorney remaining at the agency, determine what the obligation of the agency is for handling client funds.

11 COMPLETE ADMINISTRATIVE LEGAL TASKS

- Contact professional liability insurance broker to provide notification of closure, discuss policies, and plan for future termination
- Ensure that documents outside of client files are either destroyed or maintained by a designated attorney or law firm
- Determine if bar dues, membership fees, and/or occupational taxes need to be paid for the previous calendar year
- Confirm that all bar dues, membership fees, and/or occupational taxes have been paid through the date of closure
- Determine if bar membership status needs to be updated (active, inactive, etc.) and complete status change
- End legal subscriptions (e.g. Westlaw, Lexis) to prevent unauthorized access or billing after closure
- Close databases that will not be maintained and move client information to storage, in a way that protects clients' confidentiality and privilege
- Confirm that all malpractice insurance coverage remains in place through final case closure

12 COMPLETE ADMINISTRATIVE OFFICE TASKS (FOR STAND-ALONE PROGRAMS)

- Terminate leases for office space and/or equipment ensuring compliance with lease notice periods and contract obligations
- Notify utility and services providers of termination dates (e.g. phone, internet, copier contracts, cleaning, and waste services)
- Dispose of furniture, supplies, and other physical property in the office
- Empty, terminate, or make arrangements for storage units, P.O. box, and safety deposit boxes consistent with confidentiality and privilege requirements
- Coordinate with accounting to finalize outstanding payables, receivables, and payroll prior to dissolution
- Dissolve nonprofit with the state or other government entity and ensure that required IRS Form 990 and final financial reports are completed
- Retain organizational financial records for the minimum period required by federal, state, and funder regulations
- End, extend, or modify entity's Professional Liability Insurance, including any "tail coverage" that may be needed to protect an organization after the conclusion of legal services