

HEADNOTES

Debra and E. Leon Carter Support DVAP

BY MICHELLE ALDEN

Longtime supporters of the Equal Access to Justice Campaign, **Debra and E. Leon Carter** generously supported the Dallas Volunteer Attorney Program (DVAP) with a gift of \$25,500 this year. E. Leon Carter is a Principal at **Carter Arnett**. The firm serves clients around the world in a full range of litigation matters, including commercial disputes, antitrust, employment, securities, premises liability, product liability, serious personal injury, theft of trade secrets, and more.

The Carters' commitment to the EAJ Campaign is truly impressive, as they have contributed a total of \$181,050 to legal aid since 2010. "As someone once said, 'Our justice system is only as strong as the weakest person it seeks to protect.' Debra and I both grew up in east Texas, and we both witnessed first-hand low-income people of all races not being able to obtain the justice that this country espouses. While we don't envision an end to injustice in our lifetimes, we believe that we can each play a part in eradicating some of the barriers to achieving justice. Debra and I firmly believe that having access to justice is a basic human right, which is why we have supported Equal Access to Justice all of these years, and we will continue to do so," Leon stated.

The Equal Access to Justice Campaign is the annual fundraising campaign that supports the activities of DVAP. The Carters' gift makes it possible for DVAP to continue to provide legal aid to low-income people in Dallas, keeping the doors to the courthouse and our overall justice system open to many more people in our community. Since 1982, DVAP has provided, recruited, and trained pro bono lawyers to provide free legal aid to the poor in Dallas. The problem of access to justice in Dallas County is one that DVAP works to correct every day. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near the poverty level, and 42 percent have a slim hope of affording an attorney. With annual poverty incomes of \$34,687 for a family of four, justice is a luxury for low- and moderate-income families.

DVAP's volunteer attorneys can make a profound difference in the lives of low-income people in the community, often by donating only a few hours of their time. In one recent case, Kevin hired a contractor to fix water damage in his home. The total cost of repairs was estimated at \$38,000. The contractor asked for 50 percent of the total cost to be paid before starting the project. Based on the terms of the contract, Kevin's insurance company agreed to pay 50 percent to

start the project. Two months into the project, the contractor asked Kevin for more money as the insurance company had refused to pay him. The insurance company did not release any more money because 75 percent of the work had still not been completed. Kevin sought to sue the contractor for not completing the job. **Jonathan Bass**, Associate at Greenberg Traurig, accepted the case and filed suit against the contractor under the Deceptive Trade Practices Act. During mediation, the contractor agreed to pay the client \$3,500 for the work he had not completed. Kevin was grateful to recover some monetary compensation following this unfortunate ordeal.

The Carters are happy to play a part in providing assistance to our low-income neighbors. As Leon said, "Debra and I are blessed, and we know that God expects us to be a blessing to others. We just pray that He continues to use us as His vessels to give back and bless others."

The commitment of Dallas attorneys and the DBA to the Equal Access to Justice Campaign is commendable. Since 1997, the DBA and Legal Aid have joined forces to raise money for the program, with Dallas lawyers donating over \$18 million.

DVAP is a joint pro bono program of the DBA and Legal Aid of NorthWest Texas. The program is the only one of its



Debra and E. Leon Carter

kind in Texas and brings together the volunteer resources of a major metropolitan bar association with the legal aid expertise of the largest and oldest civil legal aid program in North Texas. For more information, or to donate, visit www.dallasvolunteerattorneyprogram.org. **HN**

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Focus M&A/Solo & Small Firm

Retiring or Selling Your Practice Responsibly

BY GREG SAMPSON

When the time comes to plan for the inevitable close, sale or other transition out of your practice, there are a few common methods to consider. As outlined in a *Headnotes* article last July on best practices for closing a solo or small firm, there are three basic forms of transition commonly used. These include recruiting a younger lawyer to mentor, who will take over the practice, merging with or joining another practice, or selling the practice. Each of these methods encounters similar challenges under our Rules of Professional Responsibility that must be carefully navigated.

A preliminary step in any form of practice transfer or closing is preparing your client files for transfer or destruction. Rule 1.14 on safekeeping client property requires culling each closed file for any client property or original documents that must be returned. Of course, this includes identifying to whom all amounts held in your IOLTA account belong and returning any to terminated clients. Any successor lawyer should likewise safeguard and account for transferred client funds in an

IOLTA account.

Before destroying a closed file, you should obtain client consent. This can be done upon termination of representation or in advance under your initial engagement letter. No client file should be destroyed without assuring that the client will not be harmed by doing so. That time period will differ depending on the representation, but you should at least wait until the four-year limitations period has run on any potential malpractice claim against you.

Rule 1.05, dealing with confidentiality, requires protection of client files from the eyes of other lawyers outside of your firm without client consent. This necessitates caution when allowing potential buyers of a part or all of your practice to review the matters being transferred. Without advance client consent, only general information such as the type of case and revenue should be shared in an initial assessment. Again, the client's consent may be accomplished in advance through your engagement letters, provided they fairly advise the client of the potential circumstances and need for such a transfer.

When bringing lawyers into your practice

or joining other lawyers, rule 1.09 requires screening clients you represent for any conflicts of interest. This may require terminating representation on conflicted client matters or obtaining client waivers or consents when appropriate under the rules.

Regardless of how the client file is transferred to new representation, any lawyer taking over must also be competent to handle the matter as required by rule 1.01. It is also essential before transfer under rule 1.03 on client communication, that the client be fully informed of the manner of transfer, who will be taking over the file, and given an opportunity to either consent or choose to take the file elsewhere. Should there be a change in the scope or other essential elements of a representation or terms of the engagement, rule 1.02 requires full disclosure and consent of the client.

Rules concerning permissible fee arrangements must be carefully navigated in the sale of a practice. All fee agreements should be in writing and should clearly explain the basis or rate of the fee before or upon commencing representation under rule 1.04. Fee split-

ting is prohibited under rule 1.04. So, any sale of a part of a practice should be accompanied by a real practice-ending motivation, such as retirement, taking a judicial position, or exiting a particular practice area. A sale agreement should include provisions prohibiting a return to the practice being sold, and avoid any purchase payment that involves fee sharing without adequate contribution to the representation by the seller.

These and other rules implicated in the closing, transfer, or sale of a practice are discussed more fully in the Succession Planning portal on the State Bar Law Practice Management website, together with related best practice tips and sample forms. www.texasbarpractice.com/law-practice-management/plan. And although not a part of our Texas Responsibility Rules yet, ABA Model Rule 1.17 on the sale of a practice is a good guide for structuring a sale that meets most if not all of the rules outlined above. **HN**

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Inside

- 8** Cybersecurity, Data Privacy, & Cloud Issues in M&A
- 14** Mental Health Awareness Month
- 20** Five Keys to Hiring a Rockstar Staff Member
- 25** Employment Laws Solos and Small Firms Need to Know About



Need Help? You're Not Alone.

- Texas Lawyers' Assistance Program.....(800) 343-8527
- Alcoholics Anonymous.....(214) 887-6699
- Narcotics Anonymous.....(972) 699-9306
- Al Anon.....(214) 363-0461
- Mental Health Assoc.....(214) 828-4192
- Crisis Hotline.....1-800-SUICIDE
- Suicide Crisis Ctr SMU.....(214) 828-1000
- Metrocare Services.....(214) 743-1200

More resources available online at www.dallasbar.org/mentalhealthresources